

GRIFFIN B. BELL

HEARINGS
BEFORE THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
NINETY-FIFTH CONGRESS
FIRST SESSION
ON
THE PROSPECTIVE NOMINATION OF GRIFFIN B. BELL, OF GEORGIA,
TO BE ATTORNEY GENERAL

JANUARY 11, 12, 13, 14, 17, 18, AND 19, 1977

Printed for the use of the Committee on the Judiciary



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NOMINATION OF GRIFFIN B. BELL

TUESDAY, JANUARY 11, 1977

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 10:10 a.m., in room 2228, Dirksen Senate Office Building, Senator James O. Eastland, chairman, presiding.

Present: Senators Eastland, McClellan, Kennedy, Bayh, Burdick, Abourezk, Riegle, Sasser, DeConcini, Thurmond, Mathias, Scott, Chafee, and Heinz.

Also present: Francis C. Rosenberger, chief counsel, and J. C. Argetsinger, David Dixon, and Britt Singletary, of the committee staff.

Chairman EASTLAND. The committee will come to order.
Senator Talmadge?

TESTIMONY OF HERMAN E. TALMADGE, A SENATOR FROM GEORGIA

Senator TALMADGE. Thank you very much, Mr. Chairman and members of the Judiciary Committee.

It is an extreme honor for me to appear here with my colleague, Senator Nunn, today to present Judge Griffin Bell for your consideration to be Attorney General of the United States.

I have known Judge Bell for at least 30 years. He is outstandingly qualified to every manner possible to be Attorney General of the United States. He has had almost 30 years of legal experience and judicial experience.

In addition to that, he is known as an extremely able administrator. He is a man of impeccable character and integrity. He is known and respected by members of the bar and the bench throughout the entire United States.

Judge Bell served approximately 15 years on the Circuit Court of Appeals of the Fifth Circuit. He was appointed to that position by the late President John F. Kennedy. He served with honor and dignity in that position.

I am confident, Mr. Chairman, that he will deal with an able and even hand with all matters that come before him and the Department of Justice, and that he will always uphold the letter and the spirit of the Constitution.

Judge Bell has been criticized by some civil rights groups. I may say those groups are not in Georgia; they are outside of Georgia.

When the Supreme Court in 1954 handed down its decision of *Brown v. the Board of Education*, it upset the system of segregation in some 17 or 18 States in the Union that had been in existence since

1896; that is, the decision of *Plessey v. Ferguson*. It was a traumatic occurrence particularly in the South, and to a lesser degree, throughout the United States.

Judge Griffin Bell was a voice of moderation during that period of time.

When Ernest Vandiver was elected Governor of Georgia in 1958 and took office in 1959, laws on the statute books in the State of Georgia provided that any school that was integrated would be closed. Georgia was not alone in that. Many other States were similarly situated.

Judge Bell knew that the State was about to run into an impasse. He sought to pour oil on troubled waters. He conceived the idea of organizing what became known as the Sibley Commission to try to pour some oil on troubled waters. The Sibley Commission held hearings throughout the length and breadth of the State of Georgia.

As a result of that, after the voice of the people had spoken, the General Assembly of Georgia repealed the law closing integrated schools. So Judge Bell was primarily responsible at that time for resolving the very traumatic dilemma that Georgia faced.

May I say also, Mr. Chairman, that the civil rights leaders in Georgia overwhelmingly support Judge Griffin Bell. They knew what he did at that time. They knew that he was instrumental in preventing the schools of my State from being closed.

His record, Mr. Chairman, speaks for itself. It indicates beyond doubt that he will be firm but fair in administering the Department of Justice and in setting an example for all of the Nation in law enforcement.

Judge Bell practiced law in Atlanta and Georgia and served on the U.S. circuit court of appeals during a tumultuous and even inflammatory era in the States which comprise the fifth circuit.

Those were difficult years for all of the Nation, but especially for the South. During this time, he acted as a moderating force at a time when moderation was sorely needed. He has every right to be proud of the role he played, and we are indebted to him for it.

I was very interested to read an editorial column in the Washington Post of January 6 by Eugene Patterson, who is presently editor and president of the St. Petersburg Times.

During the troublesome years to which I have just referred, Mr. Patterson was editor of the Atlanta Constitution, having come to the position following the death of the highly respected internationally renowned human rights advocate Ralph McGill.

From 1964 to 1968, Mr. Patterson served as vice chairman of the U.S. Civil Rights Commission. Mr. Patterson wrote in his column:

* * * when the dust settles, Bell is likely to be seen for what he is: An able and incorruptible lawyer of the highest character and integrity and a principled man, who on the balance of his actions over the last two decades, can be depended upon to demand that civil rights laws be obeyed.

[The column by Eugene Patterson referred to follows.]

[The Washington Post, Jan. 6, 1977]

BELL: "A GOOD MAN FOR A CLEANUP JOB"

Carter's larger reasoning in picking Griffin Bell, knowing in advance he would draw a troublesome reaction, is more reassuring than disturbing to those of

us who have known Bell well over the last 20 years. Carter's whole cautious approach to his Cabinet selections shows he's not inclined to gamble or attract controversy lightly to his appointments. Why, then, did he expose himself deliberately to the heat he knew Bell's appointment as Attorney General would bring, with its surface overtones of political cronyism once again at Justice?

Chances are, the appointment signals a Carter determination to clean house at the department, including the FBI. For, when the dust settles, Bell is likely to be seen for what he is: An able and incorruptible lawyer, of the highest character and integrity and a principled man, who on the balance of his actions over the last two decades, can be depended upon to demand that civil rights laws be obeyed.

If this runs counter to the impression given by the single-shooting of his back-ground, his overall record need only be examined.

To comprehend what has happened during the last 15 years in Dixie, it is necessary to understand who, including Carter and Bell, made it happen. These are men who turned against Southern popular custom and their own ancestry to work toward rectification, in one generation, of racial wrongs spanning two centuries. Until that fact sinks in, along with the majestic meaning of it, the nation will continue to find it hard to understand the Southern administration that leads it.

True, there were greater white heroes than Carter and Bell in moving the South toward desegregation in the 1960s. But the pace of the march was less important than the direction the few leaders took in that time when too many politicians and judges were clinging to the safe popularity of the past. To go back from the present and glean isolated errors from the past of such men is to lose sight of their true measure: The sustained thrust of their courage and commitment in a time when it took courage to have courage. Bell qualified as did Carter, and we Southerners who watched them through those years know them for what they are.

I watched Bell come out of an Atlanta establishment law firm in the 1950s to serve as chief of staff to an upright but segregation-trapped governor of Georgia, Ernest Vandiver. Bell helped ease Vandiver into appointing a blue-ribbon panel, called the Sibley Commission, to hold hearings across Georgia for the purpose of educating the segregationists on the inevitability of public school desegregation. And when Alabama-style riots broke out when the University of Georgia was forced by the courts to desegregate, Bell was among the few who persuaded Vandiver not to follow George Wallace's example of inaction in the Autherine Lucy riot, but to send in the state patrol, which reclaimed the Georgia campus from the mob and protected the black students there.

These were critical, almost politically suicidal steps in that time, primitive as they may seem now. But they marked out the men of the future. Southerners measure men now on where they stood then.

Bell took the Georgia chairmanship of John F. Kennedy's campaign before it was by any means certain a Catholic and a "liberal" on civil rights could carry that state in 1960.

And once on the bench of the federal Circuit Court of Appeals, where he perceived himself to be a moderate bridge between the liberal judges and the conservatives who didn't want to move on civil rights, Bell wrote a strong record of upholding black rights to vote and to go to integrated schools.

Nobody's perfect. I felt Bell voted wrong in finding that the Georgia constitution empowered its legislature to deny a seat to an elected representative, Julian Bond. He didn't address the right or wrong of the legislature's act, as I recall. He simply felt it had the power to act, rightly or wrongly. The Supreme Court reversed him. So he erred. So that was one case. His record shows a voluminous and unswerving series of opinions requiring justice for blacks, including a period when, as he says, he was practically acting as "the superintendent of schools for Mississippi." That record deserves a fair examination by the hawks swooping at his Southern head.

Last February, when Bell resigned from the federal bench to reenter private practice, I interviewed him and printed his own words, which state his philosophy at a time when he had no pressure on him and no reason to dissemble:

"The type of case coming to us has gotten mighty routine," he said, explaining his resignation at age 57. "I'll bet 40 percent of them are criminal cases involving narcotics. It got to be a production line. There was little time to reflect. This

was not the reflective court I went on 14½ years ago, judging great issues. . . . [T]he pace was too slow after the cases I'd known with larger meaning for the society and the nation. . . ."

Bell went on to recall with pride his part in ending the notorious county unit system of elections in Georgia; in helping to reapportion state legislatures and force just representation for all; in giving life to the Voting Rights Act for blacks in the South; and, exceeding all others in stress, in requiring desegregation of the schools of his native South.

"We contained a social revolution," Bell said 11 months ago. "The law did that. It was one of the most remarkable achievements in history when you look back on it. The federal court system proved to be a great instrument for the general good."

Taken whole, Griffin Bell is a level-headed lawyer of dependable character whose tough commitment to the principles of political rectitude and racial justice were case-hardened in the pressures of the 1960s when commitment counted. The Senate and the nation most likely will come to see that the President-elect has nominated a pretty good man for a cleanup job that can lead to restoration of faith in the Justice Department.

Senator TALMADGE. This is an outstanding and well deserved testimonial to which I fully subscribe. It is my earnest hope that Judge Bell will be confirmed without delay.

Chairman EASTLAND. Any questions?

The Chair hears none.

Senator TALMADGE. Thank you very much, Mr. Chairamn.

I have to preside in a hearing in Agriculture on the confirmation of Bob Bergland. I wish to be excused, if I may.

Chairman EASTLAND. Senator Nunn?

TESTIMONY OF SAM NUNN, A SENATOR FROM GEORGIA

Senator NUNN. Mr. Chairman and members of the committee, it is a distinct privilege and honor to appear before the Judiciary Committee this morning for the purpose of introducing President Carter's nominee for Attorney General, my good friend Judge Griffin Bell.

In recent years, the character and integrity of our law enforcement institutions and the individuals who administer them have been severely questioned. As a result, Federal efforts to combat the increasing crime rate in this country have been undermined. The confidence of the American people in their Federal law enforcement officials has plummeted to a very low level.

President-elect Carter's selection of Judge Griffin Bell as our 72d Attorney General was particularly encouraging to me because of my confidence that Griffin Bell possesses the rare qualities and capabilities that will enable him to reverse these negative trends and restore the confidence of the American people in our system of justice.

This country needs an Attorney General who has a proven record as a leader, innovator, and administrator. The Attorney General must be a person who has the confidence of the President. He should be dedicated to the rule of law, vigorous in spirit, and able effectively to organize and administer the many facets of the Department of Justice.

Judge Bell unquestionably possesses these qualities. He is a man noted for his candor, his quickness of mind, and he is possessed of the highest character and integrity. He is a man of principle, a man of independence.

His record as a lawyer and jurist is prodigious. His public career is as well documented as any person ever to be considered for this

high post. Judge Bell is well known in Georgia, in the fifth circuit, and indeed throughout the Nation for his service as a judge and innovative leader in the area of judicial administration.

Griffin Bell's public career began on a note that marked his interest and devotion to public education. Senator Talmadge has already alluded to some of the difficult times we faced in Georgia and indeed in the South back in the late 1950's and in the early 1960's.

During the time I was a law student at Emory University in Georgia, Griffin Bell as a lawyer and later as advisor to former Governor Ernest Vandiver, was the architect of the Sibley Commission. It is universally, by black and by white, credited with being the vehicle that saved the Georgia public school system during those tumultuous and potentially explosive times.

It is sometimes difficult, Mr. Chairman and members of the committee, to appreciate truly the significance of these events without putting them in the proper context. One person who watched these events unfold was the Pulitzer prize winning former editor of the Atlanta Constitution, Eugene Patterson. Senator Talmadge has already quoted Eugene Patterson in part. I would like to quote him further. I quote him in words he recently wrote in the St. Petersburg Times:

But the pace of the march was less important than the direction the few leaders took in that time when too many politicians and judges were clinging to the safe popularity of the past. To go back from the present and glean isolated errors from the past of such men is to lose sight of their true measure: The sustained thrust of their courage and commitment in a time when it took courage to have courage, Bell qualified.

Biracial meetings were virtually unheard of in those days in the South. But it is characteristic that even then in those difficult times Griffin Bell led blacks and whites to talk and meet together in order to move toward common goals.

There are many citizens both black and white in Georgia who remember and applaud Judge Bell's role in preserving public education in Georgia and in always counseling—always counseling—the rule of law.

One of Georgia's premier black colleges, Morris Brown, recently honored Judge Bell with an honorary doctorate of humane letters. In presentation of this degree, the college emphasized the impact of the Sibley Commission for which Judge Bell was responsible on the resolution of difficult events at that time. I quote Morris Brown College in that presentation:

At a time when the entire South was emotionally supercharged over the issue of school integration, the Sibley Commission held a series of public hearings throughout the state and voted in favor of public education rather than closing schools in the face of desegregation. This vote was one of the crucial steps in helping to preserve public education for all Georgia children.

In 1961, President John Kennedy appointed Judge Bell to the U.S. Court of Appeals for the Fifth Circuit, the Nation's largest circuit. Much could be said about the next 14½ years of Judge Bell's tenure on fifth circuit bench. He wrote over 500 opinions, and during that time he participated in thousands of cases.

Bill Ship recently wrote in the Atlanta Constitution on January 1, 1977. I quote his article:

Griffin Bell not only witnessed his Southland in torment, he played a significant role insuring equal rights for all in restoring a measure of tranquility and order to the seething region.

His record as a judge in the Fifth Circuit demonstrates a major leadership role in the development of school desegregation, voting rights, employment discrimination, labor cases, and cases involving jury selection process.

To my knowledge, Mr. Chairman and members of the committee, no Federal judge in the United States has been involved in as many school cases as Griffin Bell. He handled over 140 in the most difficult, the most trying, and the most emotionally charged circumstances our section of the country has faced in many, many years.

His dedication to the public school system was typified in his recent address at Morris Brown College. He closed his address with the following message. I quote Griffin Bell directly:

I revere public education as we know it in America. It is the passport of every American child to the social and economic mainstream. I pledge to do whatever I can to see that public education is improved and maintained as a great public institution.

Apart from his formal participation on the bench, Judge Bell took an early interest in innovating reforms in judicial administration to aid and effectuate the administration of justice. The Fifth Circuit's chief judge, Judge John R. Brown, for example, has called Judge Bell the father of many of the Fifth Circuit's innovative screening and expediting processes.

These experiences within his own circuit and his growing national reputation in the judicial administration field led to his appointment in 1973 to the board of directors of the Federal Judicial Center in Washington.

He has also served as the chairman of the Committee on Innovation and Development. In 1976 he became chairman of the American Bar Association's standing committee on judicial administration.

Also in 1976, he chaired a task force of the National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice, which made concrete recommendations designed to improve the administration of justice.

Mr. Chairman and members of the committee, in closing, I believe it is important to bear in mind the fact that it is much easier to sit back in the protected confines of 1977, with the perspectives provided by hindsight, and criticize decisions made as much as a decade ago than it is to sit in the chair of the decisionmakers with a crisis at hand, and fulfill the responsibilities of the U.S. Constitution.

As Theodore Roosevelt once said:

It is not the critic who counts, not the man who points how the strong man stumbled, or where the doer of deeds could have done them better. The credit belongs to the man who was actually in the arena.

Mr. Chairman and members of the committee, President-elect Carter's nominee for Attorney General, Griffin Bell, has been in the arena. I believe that he possesses the experience, the vision, the dedication, and the character to bring about the restoration of faith in our judicial system and indeed in our Department of Justice.

I urge the members of this committee and the U.S. Senate to confirm this good man for this important position at this important time in our nation's history.

Thank you, Mr. Chairman.

Chairman EASTLAND. Any questions?

The Chair hears none.

You have made a very fine statement, Senator Nunn.

Senator NUNN. Thank you, Mr. Chairman.

Senator MATHIAS. Mr. Chairman, before Judge Bell begins, may I ask the Chair what your thoughts are as to procedure? The committee has not had a chance to get together and discuss exactly how we will proceed.

Chairman EASTLAND. My idea is to give 15 minutes to each Senator on the committee to start with, and to rotate, one Democrat and one Republican.

Senator MATHIAS. What I was really thinking of, Mr. Chairman, was how we would proceed to the final decision here. I assume that the committee will not act on this nomination until it is actually received from President Carter.

Chairman EASTLAND. We are going to have a committee meeting where we will make that decision.

Senator MATHIAS. I assume that Judge Bell would be available at any time up until that decision is made by the committee so that if any questions should arise as a result of other testimony, other information which comes to the committee, then he would be in a position to respond to those questions.

Chairman EASTLAND. That is correct.

Senator MATHIAS. I believe that this decision may be the most important one that this committee makes this year. I think we have to approach it with the kind of care, the deliberate care it deserves. I think that if that is the understanding of the committee, then there can be no objection to proceeding at this time on the rather informal basis on which we are meeting.

Chairman EASTLAND. Judge Bell, have you read the biographical sketch which has been provided? If it is correct, we will make it a part of the record.

Judge BELL. I think it is correct and I hope it will be made a part of the record.

Chairman EASTLAND. It will be made a part of the record.

[The biographical sketch referred to follows.]

BIOGRAPHICAL SKETCH OF GRIFFIN B. BELL, ATTORNEY AT LAW, ATLANTA, GA.

Born: Americus, Georgia, October 31, 1918.

Legal Residence: Georgia.

Education: LL.B. degree, Mercer University Law School, Cum Laude; Order of the Coif (Vanderbilt Law School, Honorary), Honorary Doctor of Laws, Mercer University; Honorary Doctor of Humane Letters, Morris Brown College.

Military: Served in the Army, World War II (Transportation Corps) Discharged with the rank of Major.

Married and one son, Griffin, Jr., Member of Savannah, Georgia, Bar.

United States Circuit Judge, Court of Appeals for the Fifth Judicial Circuit, October 6, 1961-March 1, 1976.

Partner, King & Spalding, Atlanta, 1952-1961; March 1, 1976 to date.

Began practice in Savannah with the firm of Lawton & Cunningham in 1948. Partner in the firm of Matthews, Maddox & Bell in Rome in 1952 through August, 1953.

Chief of Staff to former Georgia Governor Vandiver, January 13, 1950-October 3, 1961 (Honorary position).

Chairman, Board of Deacon, Second Ponce de Leon Baptist Church.

Chairman, ABA Division of Judicial Administration, 1976.

Chairman, Atlanta Commission on Crime and Juvenile Delinquency, 1965-1967.

Chairman, Committee on Innovation and Development, Federal Judicial Center, Washington, D.C., 1968-1970.

Member American Law Institute.

Member, Commission on Standards of Judicial Administration, ABA, 1971—present.

Member, Board of Directors, Federal Judicial Center, 1973-1976.

Trustee, Mercer University; The Institute for Continuing Legal Education in Georgia.

Member, Visiting Committee, Vanderbilt University Law School 1969-1976.

Chairman EASTLAND. Judge Bell, will you stand, please?

TESTIMONY OF GRIFFIN B. BELL

Chairman EASTLAND. Do you solemnly swear that the testimony you are about to give is the truth, the whole truth, and nothing but the truth, so help you God?

Judge BELL. I do.

Chairman EASTLAND. Judge, you have been an outstanding lawyer and an outstanding member of the judiciary. You are honest and honorable. I will vote to confirm you.

Senator McClellan?

Senator McCLELLAN. First, Judge Bell, I would like to congratulate you on receiving this nomination. It is a high honor indeed and a tremendously responsible position in our Government.

I never met you until this morning when you visited with me for a little while. I have, from reputation, held you in high esteem. Today my visit with you confirmed my respect and regard for you.

In the conversation this morning I asked you some questions pertaining to matters directly involved in the performance of your duties. I may say that I was quite satisfied with the answers.

In the interest of saving time, I have had the question and the matters that I talked about with you this morning reduced to writing.

I now ask unanimous consent that I may submit these written questions to the nominee, Mr. Chairman, and that the questions and his answers appear at this point in the record.

Chairman EASTLAND. Is there objection?

The Chair hears none. It is so ordered.

Judge BELL. Senator, I will be glad to follow that procedure.

[The questions referred to, and the written answers subsequently received, follows.]

QUESTIONS SUBMITTED BY SENATOR JOHN L. McCLELLAN FOR ATTORNEY GENERAL-DESIGNATE BELL

1. CRIMINAL CODE

In 1971, after several years of study, the National Commission on Reform of Federal Criminal Laws (also called the "Brown Commission") issued its Final Report recommending substantial modernization and reform of the Federal criminal laws. Since that time, the Subcommittee on Criminal Laws and Procedures, which I am privileged to chair, has been engaged in a major legislative effort to accomplish those twin goals of modernization and reform.

Would you very briefly give us the benefit of your view on the state of our Federal criminal laws in general and whether you believe such reform legislation is necessary?

If you have had the opportunity to examine the legislative attempts that have thus far been made to codify, revise, and reform our Federal criminal laws, can you give us your opinion of those attempts? Do you think they have come close to achieving their goals?

2. SENTENCING

One area of the criminal law that has received great attention in recent years—and certainly one of the areas that has been the most criticized—has been the sentencing process. Sentences in criminal cases are condemned as too harsh, too lenient, too uneven, and so forth.

Can you briefly give us your views on the state of sentencing in the Federal judicial process? Is the process in need of reform?

Should there be appellate review of sentences on the Federal level?

What do you think of the establishment of legislative guidelines to assist judges in the determination of appropriate sentences?

Would you give us your opinion of mandatory minimum sentences?

3. DEATH PENALTY

Since the Supreme Court's landmark decisions on the death penalty last July, much has been written about capital punishment. Could you briefly give us your opinion about it?

Do you personally believe in the death penalty?

Do you think that, if it is imposed, it does serve as a deterrent to others to refrain from certain criminal acts?

Do you believe that there are some crimes that are so brutal—so horrendous—that the perpetrator has forfeited his own right to life by their commission?

Some opponents of capital punishment say that, instead of the death penalty, a better answer is long-term imprisonment where these people can be rehabilitated. Do you believe that our prisons really rehabilitate people?

RESPONSE BY JUDGE GRIFFIN B. BELL TO WRITTEN QUESTIONS SUBMITTED BY
SENATOR McCLELLAN

1. CRIMINAL CODE

I share the concern of Senators McClellan, Kennedy and others about the need for substantial modernization and reform of the Federal criminal laws, which are now scattered through the Federal statutes. A coherent codification of the Federal criminal law will certainly be a praiseworthy achievement.

Although I have not reviewed in detail the lengthy draft of "S. 1" proposed in the last session of Congress, I am aware of a number of provisions in that bill which provoked significant controversy and concern, especially from civil liberties groups. Because of the overriding importance of enacting a coherent and internally consistent Federal criminal code, I concur in the present course of Senators McClellan, Kennedy and others to sever the controversial provisions from the previous draft and save them for consideration on their merits as individual pieces of legislation.

2. SENTENCING

I believe that the sentencing process in the Federal judicial system and the sentencing provisions in Federal statutes are in need of substantial reform. One means of eliminating disparities in the current sentencing system which is worthy of serious consideration is the establishment of legislative guidelines to assist judges in the determination of appropriate sentences.

As to specific proposals, I favor establishing some process of appellate review of sentences on the Federal level. I am interested in proposals for mandatory minimum sentencing laws. My specific analysis would depend upon the particular sentencing provisions which are proposed for particular offenses.

3. DEATH PENALTY

I would not want to do away with the death penalty without considerable study. At present, I favor capital punishment laws to cover a narrow set of offenses such as aircraft piracy and the killing of a prison guard. The complex question of the efficacy of the death penalty as a deterrent to crime deserves careful examination.

One of the most troubling weaknesses of our Federal prison system is its failure to really rehabilitate people. As I have testified, I am committed to improving the capacity of the prison system to provide education and other forms of rehabilitation to Federal prisoners.

Senator McCLELLAN. Unfortunately, because of another commitment, I can be here only a few moments this morning.

These questions I am submitting will no doubt also arise from other sources during your examination. I expect to be back on other occasions. After you have submitted your answers for the record, I may wish to follow up on some of them.

However, I was generally satisfied with our discussion this morning. I find nothing in your record that would militate against you in any way with regard to your competence, your integrity, your judicial temperament and your overall capacity to serve well as Attorney General of the United States.

I do not anticipate that testimony will be presented to this committee that would warrant my changing that opinion. Therefore, as of now, unless there develop during these hearings some factual information of such a derogatory nature as would disqualify you from serving, it is my intention to support your confirmation.

Judge BELL. Thank you, Senator McClellan.

Senator McCLELLAN. Thank you, Mr. Chairman.

Chairman EASTLAND. Senator Mathias?

Senator MATHIAS. Judge, I want to join with all the members of the committee in welcoming you here today and congratulating you on your designation by President-elect Carter to be Attorney General.

As you well know, the appointing power in this country under our Constitution is divided between the President and the Senate. The President, of course, nominates and the Senate confirms.

It is a very serious responsibility that is cast upon us by the Constitution. I regret that I cannot be quite as brief as the chairman and the distinguished Senator from Arkansas because I do have a number of questions.

I think perhaps the first question that comes to my mind revolves around the office of Attorney General itself. The Attorney General is sometimes known as the first lawyer in the land. If that is so, I wonder what is your concept of that first lawyer's first client?

Judge BELL. Well, I look upon the Department of Justice as being the law department of the Nation. I am not certain that you agree with that.

If you take that concept, and I do, then I have many clients. The President would be one. The agencies would be one. Even the Congress might look to the Nation's law department for some assistance and guidance. And the American people would be a client.

I think you are administering and enforcing a body of law. It is necessary for you to think of the Department of Justice as the people's law department.

So I have a broad concept as to the duty and functions of the Justice Department.

Senator MATHIAS. It is a broad responsibility; but, in fact, would the people not be the first client of the Attorney General?

Judge BELL. Possibly so. It is according to what you think about representative government. I think of the Congress and the President as representing the people. You would be more likely to be in touch with them than you would be the people. But certainly, if I am confirmed, the Department of Justice would be an open place where the people would be welcome. Groups will be welcome. I have told many

people this already. Through that medium, you will be representing the people.

Senator MATHIAS. We have been very lucky in this country. In the normal circumstances, the interests of the President and the interests of the people have not diverged very often. But there have been a few such rare occasions.

Judge BELL. Right.

Senator MATHIAS. In those occasions, where do you think the duty of the Attorney General lies?

Judge BELL. I would be with the people, because I believe in the Bill of Rights. I think the essence of our constitutional system is to protect the individual. Therefore, I would have to protect the people.

Senator MATHIAS. I would concur in that order of priority. I personally believe that that is the correct order of priority.

Looking at your judicial record, in the case of *Bond v. Floyd*, where the Fifth Circuit affirmed the refusal of the Georgia House of Representatives to seat Julian Bond, you employed certain language which I will quote. You said:

Mr. Bond's right to speak and dissent as a private citizen is subject to the limitation that he sought to assume membership in the house.

I find that somewhat disturbing. I am wondering if you adhere to that rule today and if you could explain your reasoning in that case.

Judge BELL. Well, ordinarily, at least I have been taught that, a judge ought not try to explain an opinion. But I realize that that is a controversial opinion, I will speak to it.

Senator MATHIAS. If you were sitting here as a judge today, I do not think you should be required to explain it; but you are here in a different character today.

Judge BELL. That is true. Although I do not entirely agree that I can explain every opinion I have ever been in, there might be some lack of propriety if I were to try to do that. But in this case I will speak to it.

In the first place, it was not a Fifth Circuit opinion. It was a three-judge district court opinion which went straight to the Supreme Court under the rule in effect at that time.

It was a two-to-one opinion. It was a question of first impression. It had nothing to do with racial discrimination. The lawyers in the case for Mr. Bond will be glad to say that. Everyone has always assumed that.

It was decided in the Supreme Court on a ground which was not addressed by either the majority or the dissenting opinion.

The question was the power of the legislature to pass on the qualifications of its own members. The precedents involved this body, the U.S. Senate. This body had prevented Senator Bilbo of Mississippi from taking his seat. They had also indicated that they could prevent Senator Smoot from Utah from taking his seat. The constitutional law authorities at the time were that a legislative body did have the right to judge the qualifications of its members.

Judge Tuttle took the position in dissent that the only qualifications that could be judged by the body were what was in the written law: Age, was Mr. Bond 21 years old; was he an American citizen; was he willing to take the oath?

That was the difference between us.

Bear in mind that was before the Adam Clayton Powell decision by the Supreme Court. When the case got to the Supreme Court, it was reversed on a different ground; that is, that freedom of speech under the first amendment overrode all of these considerations. They reversed us nine to zero on that point.

I know you know a lot about the Constitution. Most every constitutional case you have involves a balancing of rights. It is one person's rights against another's rights. This was legislative power balanced against first amendment rights. First amendment rights prevailed.

That is the way it came out. Since then, there have been a lot of decisions that give more power now than then to the first amendment. It is quite obvious that we were wrong and that the Supreme Court was right about it.

Senator MATHIAS. What is your own personal opinion today on the subject of limitations on the right of free speech in the country? I think that is really what the relevant point here is.

Judge BELL. My view has never changed. I would agree with Justice Holmes that you ought to have the maximum in free speech, but you do not have the right to shout "Fire" in a crowded theater. I have never heard of any justice doing it better than Justice Holmes did it.

I think that most everyone who has studied my record picks out opinions that are against me and they say nothing about 490 opinions that might favor me. But I think if you will study my record, you will find that I am very strong on freedom of speech, freedom to assemble, freedom to petition the Government for grievances. I have written some leading cases in that area.

Senator MATHIAS. Judge, I think you are arriving here on the basis of those other decisions. You can assume that you would not be here if you did not have that body behind you. But it is the ones that might reveal a philosophy on your part which I think we have a duty to inquire into.

Judge BELL. I concede that.

Senator MATHIAS. In that same category of ones I think we ought to look into is the case of *United States v. Brown*, in which I believe you wrote the dicta.

Judge BELL. I wrote the majority opinion, and it contains some dicta.

Senator MATHIAS. Yes; well, in that dicta you said:

Because of the President's constitutional duty to act for the United States in the field of foreign relations and his inherent power to protect national security, in the context of national affairs the President may constitutionally authorize warrantless wiretaps for the purpose of gathering foreign intelligence. Restrictions upon the President's power which are appropriate in cases of domestic security become artificial in the context of the international sphere.

This, I think, is of importance. Last year President Ford became the first President to cause legislation to be introduced—with strong support of Senator Kennedy and others—requiring judicial warrant for foreign intelligence and national security wiretaps.

I am wondering whether you would reach the same conclusion today that you did in 1973 on that particular subject?

Judge BELL. I think that opinion was written in 1973. It was before we knew of the abuses that we now know of, in foreign intelligence gathering. That statement was based on what the law was at that

time. I think, if I recall, I quoted from the Federalist Papers. That was about the only authority I could find. There were three or four different Federalist Papers.

I think that is a broad statement, I think that was too broad in today's context perhaps. I say this without in any way saying that the President's power should be diminished, but I realize now that is more of a sharing of power between the Congress and the President in this field.

I have been briefed since I have been designated for the position, and I know a good deal about what is going on. I am of the view that this is not an insurmountable thing, but it is something where the rights of American citizens are involved. As such, we should take care in administering the power to gather foreign intelligence.

I think that is probably about all I need say about that. I think what I said there is just a statement. I think it was a statement of constitutional law where it was made without any facts because that was not a fact. In that case we examined the authority to surveil in camera, and there was no problem about that. The facts are not in the opinion, of course.

I think that we have got to take much care to safeguard any constitutional right of American citizens, even though it is in foreign intelligence.

Senator MATHIAS. Can you tell the committee, then, in this area, if legislation similar to that which was advocated last year by President Ford and by Attorney General Levi were to be reported favorably by the committee that you could at least approach that with an open mind in your recommendations to the President as to whether it ought to be approved or disapproved?

Judge BELL. I would not have any trouble at all. I am familiar with the use of wiretap orders obtained from Federal and State courts in domestic security. I understand that system. It works well.

I have never been one who did not trust the Federal judges. I trust the Federal judges.

Senator MATHIAS. Have you had an opportunity to review that legislation?

Judge BELL. I have. I have read the bill. I have discussed it with two or three people. It looks like a good approach to me. I would not want to commit myself, but generally it seems to be a good approach.

It is limited to ten Federal judges appointed by the Chief Justice as the issuing officers. It seems to be a good approach. That is about all I can say about it, without making a study in depth.

Senator MATHIAS. When you were designated by Governor Carter as his choice for Attorney General, you got the usual barrage of questions covering a wide variety of subjects. One of them was the position that you had taken on President Nixon's nomination of G. Harrold Carswell to the Supreme Court. I raise this only because one of the principal duties of an Attorney General is to screen the field of judicial appointments and make recommendations to a President for nominations to the various courts. In response to the questions about your support of G. Harrold Carswell, you were quoted as saying "I did not endorse Richard Nixon's appointment of G. Harrold Carswell

to the court." There is, however, on page 322 of the published transcript of this committee's hearings on Judge Carswell——

Judge BELL. Wait a minute, Senator. This is a sore point with me. You have taken that out of context.

Senator MATHIAS. I am giving you an opportunity to put it in the context you want.

Judge BELL. All right.

Senator MATHIAS. Let me say that there is on page 322 of the published transcript a letter which was received from you which would seem to be inconsistent with that statement. I want to give you the opportunity to rectify any misconception that may exist.

Judge BELL. The misconception is that I said I did not endorse him, but that I recommended him. I think I said that to the press. I think I said to the press that a judge would not endorse anyone. That would not be a proper role of a judge. I did recommend him. The letter you refer to was a recommendation. I recommended Judge Carswell. Judge Carswell and I were classmates in law school. We were friends. I recommended him during the Eisenhower administration to be a district judge. I remember doing it, but I cannot find the letter. I wrote a letter to the Attorney General.

I then recommended him to be a circuit judge. I then wrote a letter, after he was nominated, the letter you have reference to, again recommended him. Then, later on, when he seemed to be in a period of crisis in the Senate, somebody got up a telegram. It was not I, but I signed it; I authorized the use of my name. A number of judges signed that telegram. They were circuit judges. There were some 50 district judges in the Fifth Circuit that sent a telegram.

I do not think any of us were endorsing this. We were not a part of the nominating process. It was up to the President, the Attorney General, to decide what to do about the nominee. But we were recommending him as a colleague, someone we had known. This is something that at the time I suffered sharp criticism for doing. I have not seen Judge Carswell for many years, but I did write the letter. That is just a part of my record I will have to stand on.

Senator MATHIAS. Mr. Chairman, my time is up.

I would like to revert to this point when my time resumes.

Chairman EASTLAND. Senator Kennedy?

Senator KENNEDY. I, too, want to join in extending a warm welcome to you, Judge Bell.

You had warm endorsements from our colleagues, Senator Talmadge and Senator Nunn, who are, as I think you know, highly respected members of the Senate. All of us have listened to introductions of nominees from various States, but these were especially warm and generous and obviously strongly felt. I think all of us are very much appreciative of their comments, knowing you as they do.

I was impressed by your comments regarding your vision of this office that you made after Mr. Carter nominated you for Attorney General. You spoke of the high regard and respect that you have for the office; what it represented as a symbol for millions of Americans; and that it bore an important responsibility for the protection of the individual rights and liberties beyond being the counsel to the President or beyond representing the various governmental agencies; and

that it should be a source of inspiration and hope for millions of Americans who in many instances are left out of the legal system.

I heard Mr. Carter make an eloquent statement on this subject when I had the honor of appearing some years ago on Law Day at the outstanding law school of the University of Georgia.

So I am sure that that is very much in your mind at this time, as it was in his when he selected you as his nominee.

We have heard this morning, through questions by my colleague, Senator Mathias, testimony on a number of different areas which are of concern to us in the Senate and to the American people.

Judge Bell, much of the legislation which was initiated during your service as one of Governor Vandiver's principal legal advisers was overruled by the Supreme Court. If one were to take your work during that period, your membership in the various private clubs, your recommendation on the Carswell nomination, and *Julian Bond* case and others, I think a fair conclusion on these points would be that you are not identified as being in the forefront of civil rights, as holding the belief its pace should have been expedited and moved in a more accelerated fashion.

If you put those various elements together, I am interested in your response as to why the people of this country—particularly the poor, the black, the Indians, and the woman, as well as other groups which perhaps have not been able to participate in our system of justice—should have confidence in you as a protector of their rights?

Judge BELL, Senator, I will try to answer that question. That covers so many years. Somebody else could probably better judge me than I could judge myself.

I expect the blacks of Atlanta could judge me better than anyone. They know me. Some will be here to testify.

I would say—as I said to Senator Mathias—that the hundreds of cases I have been in where I have enforced the law ought to convince even the greatest doubter that I will uphold and enforce the law.

I think it is only fair to say that I have never professed to be an activist. I have never professed to be an extreme liberal. I have always professed to be a moderate. I have always thought that it is only moderates that should be on the Bench, that you ought not to be to the right or to the left if you are trying to judge matters.

That was the approach I took and sometimes it would appear—

Senator KENNEDY. How would you characterize Chief Justice Warren and the record that was made under his Court, which I think has been one of the truly outstanding performances in terms of protecting individual rights and liberties?

Judge BELL. I do not consider him to be an activist. He was refurbishing the 14th amendment. The 14th amendment had been dormant for 75 years at least. He was giving meaning to the 14th amendment. We have run through that.

I think I have done that in many cases.

But, to answer your question as to why people should have confidence in me—that is, the poor and the civil rights people who were being discriminated against—I would have to say that I would have confidence in a judge who had desegregated 141 schools.

I would have confidence in a judge who was the first judge in America who conceived the idea to carry the law out that a school

board had to be put in receivership. It has never been followed but once since then. That was in the *Boston School* case. That carried out the law.

I would have to have confidence in a judge who spent a week in Hattiesburg, Miss. trying a State court registrar for criminal contempt; the only case of that kind that there has been. I was with two other judges.

I would have confidence in a judge who has tried the only criminal contempt case for violation of a Labor Board order that had been enforced by the Fifth Circuit. I was sent to try that.

I would have confidence in a judge who was sent by the Chief Judge to preside over the panel which took over the 30 Mississippi school cases where the Supreme Court ordered the schools be desegregated at once. There would be hundreds of people who know that all the school superintendents and the lawyers were called to New Orleans and told that they had to do that. They did do it, and all those schools have been desegregated.

I think I did it with an even hand. I set up a way where both sides of lawyers could come and ask for changes, but they had to carry out the HEW plans.

I think the people who are there on the scene where the action was going on would say they do have confidence in me. It may be that people in other parts of the country may not have confidence, but they may come to have confidence in me.

I know that since I have been designated, when I meet with groups, they are dissatisfied with the system in Washington at the Justice Department. It astounds them that I would be willing to meet on a regular basis with all groups.

I think as they come to know me and come to see how I function and my views about the openness of government, I think they will become satisfied.

I do not mean everybody is satisfied. I have not been in a popularity contest. I think by and large that people are satisfied that I am a good citizen and innovative person who makes the law grow and makes it serve its purpose.

Senator KENNEDY. I do not think there would be any question about your strong personal qualities, even by some of those who have expressed some concern.

Judge BELL. May I speak to the Vandiver years?

Senator KENNEDY. Yes.

Judge BELL. That has been raised, and I think the public is entitled to have me say something about that.

Senator KENNEDY. Perhaps you could give us a precise comment on your relationship with Governor Vandiver and your role in the development and the preparation of legislation.

Judge BELL. I would like to do that.

Governor Vandiver was a friend. I was his personal counsel in at least one matter before he ran for Governor.

He ran on a strong pledge, made many times, to preserve segregated schools. He was elected in September 1958 in the primary. He had no opponent in the general election; so he was really elected in September.

I think it was October that the Supreme Court decided the first definitive opinion since *Brown v. Board of Education*—it was the *Little Rock* case. They made it clear by stating in no uncertain terms that even the prospect of violence would not justify any delay in moving ahead with school desegregation with all deliberate speed, whatever that meant. And judges often wondered what that meant. It took a long time for it to run its course.

At any rate, Governor Vandiver, then Governor-elect, asked me, as a lawyer—it is important to have in mind that I was acting as a lawyer, not as a public official. I had no policy function. I was a lawyer. He asked me if I would work with some other lawyers to tell him what he could do in view of his strong pledge to maintain segregated schools, but to keep from closing the schools.

I will have to say about Governor Vandiver at this point, never at any time did he ask for any advice on how to get outside the law. He was trying to stay within the law. He was trying to—well, he was in a bind because of what he said.

He appointed Mr. Harper Perry of Albany, Ga., who was a new lawyer. We were to work with two lawyers who had been representing the previous administration and who had gotten up certain laws that were then on the books. One of those laws said if any school was integrated, every school in that district would be closed.

We went to Virginia. We went to Alabama. I do not know where else we went. I cannot remember, and I cannot find any record of it. But we canvassed the South to see what course we ought to take in view of the *Little Rock* case.

We advised the Governor that the schools would have to be desegregated and that the best he could do would be to change the law so that only one school would be closed. Virginia had a law where the schools to be integrated would be closed and the school from whence the black child came would be closed. We told him that was punitive; you could not do that.

We cut it down to one school. This set off a chain of events that took 27 months. All of that time, there was public unrest in Georgia about saving the school system.

Senator KENNEDY. Did you formulate the plans or legislation calling for pupil transfers?

Judge BELL. I may have. I cannot be certain because there were more people working on this than me.

Senator KENNEDY. Did you write the legislation for the private school tax credits?

Judge BELL. I cannot find any record that I drew the bill. There were a lot of people working on this. The legislature was working on it as well as these lawyers. I know that I was working on the problem.

I just do not know what I drew. I do not think I drew any law. Whether it was a product of my mind or not, is what you want to know. I know one thing I did was to say that there is no sense in closing the whole school district if you can close one school.

This kept going. I went to a meeting, well, along about this time—I have a chronological statement here before me. We went back and looked at newspapers and tried to find out these steps. This was, we will say, phase 1. These new laws were passed. Not until this morning did

I remember that there was a tax credit law. But, you know, the Federal law is that you can take a tax deduction for donations to private schools. It was only last year that the Supreme Court said you could not do that if the school was segregated; I believe that is the law now.

The harmful laws were the ones that required the schools to be closed. I think maybe we already had a pupil placement. If we did not, we later got one.

During this time, the Federal court in Atlanta ordered the buses in Atlanta to be integrated. I tell this just to show what a volatile time it was.

The Governor's advisers were not in agreement. I was called to the Governor's mansion at night. I found that there were some people advocating calling out the National Guard to keep from integrating the buses. I was asked my opinion about that. I said that it would be highly improper to violate the court order, and so forth.

I remember getting home at 3 o'clock in the morning, and my wife wondering where I had been. She could not believe that anybody would argue about such a thing as this.

Two or 3 months later, one of the courts ordered that the Atlanta schools be desegregated. That was in June 1959. That is when we had a meeting that somebody refers to as the "17 lawyer meeting." I was there.

The question was whether we would switch to local option. Atlanta wanted to have a vote to see if they could maintain an integrated system so they could save public education.

Then we got up the Sibley Commission, which was to go around and have hearings. I thought of that and designed it. Mr. Sibley was formerly in the same law firm I was in. I got him to be the chairman. He was a strong leader.

They had all these hearings. I think there were 1,800 witnesses in 10 hearings. This was all to see if the people wanted to keep the schools closed. The legislature was committed to close the schools. So that was part of it.

Then the University of Georgia was ordered to desegregate. That presented a crisis that went on for 2 or 3 days. I went to a meeting with State leaders at the Governor's mansion.

The Governor announced that he was not going to close the University of Georgia, that he was going to carry out the court order. That was a badly divided meeting.

But at every one of those meetings, people in Georgia know I was a moderating force. I was always trying to carry out court orders. I was always trying to save public education. At the time, I was thought of as being liberal by the people of Georgia. They are astounded now to see that, somehow, I have become a great conservative in view of my own record locally.

That is about the way it went. Finally, we desegregated the Atlanta school system. So far as I know, every school district in Georgia is desegregated. It is probably one of the few States in the union where every school district is desegregated. A lot of them were done voluntarily.

I think a lot had to do with the fact that we never had any violence. It may be we delayed, but we never defied the law. I think the leadership during that period of time was good.

I must say, Senator, I think it is one of the finest piece of legal work that I ever did. I did it as a lawyer. Somebody said I was a State official. I was not a State official. I was chief of staff afterwards, 2 or 3 months or so after I started working as a lawyer. But that, in Georgia, is an honorary position where you get to go around to some of the Governors conferences with the Governor and things like that. It is not a position in the sense that you are working.

I did all of this as a lawyer. I believe that a lawyer has a responsibility to do things in the public area. I have always done that and my law firm has always done that.

That is about all I can say about it generally, but I will answer any specific things.

Chairman EASTLAND. Senator Kennedy, your time is up.

Senator THURMOND?

Senator THURMOND. Judge Bell, I want to congratulate you upon your appointment as Attorney General of the United States. I also wish to congratulate President Carter for selecting you.

As I have been able to gain from your decisions and articles that I have read about you, you opposed any discrimination. You favor justice for all. You have more or less taken a moderate position on matters generally.

Is that about the way you stand?

Judge BELL. I have tried to take a moderate position. I have tried to carry out the law. I do not know of any time I have failed to carry the law out.

Senator THURMOND. I notice that you have an impressive record here. After graduating from Mercer Law School cum laude, you received honorary degrees from several institutions. You had great experience as a practicing lawyer with success.

Then you were appointed to the circuit court of appeals where I believe you served some years.

Judge BELL. Fourteen and one-half years.

Senator THURMOND. Fourteen and one-half years.

I notice from the military standpoint, you served in the Army during World War II and were discharged as a major. I observe that you were chairman of the board of deacons in your church, the Baptist Church.

Judge BELL. I was; I am out of office now.

Senator THURMOND. I notice that you have been chairman of the American Bar Association Division of Judicial Administration; chairman of the Atlanta Commission on Crime and Juvenile Delinquency; chairman of the Committee on Innovation and Development, Federal Judicial Center in Washington; member, American Law Institute; member, Commission on Standards of Judicial Administration of the American Bar Association; member, Board of Directors, Federal Judicial Center; trustee, Mercer University, the Institute for Continuing Legal Education in Georgia; member, Visiting Committee, Vanderbilt University Law School.

To me that sounds like an impressive record and one deserving of great consideration.

Now, I notice in the Washington Post of Thursday, December 23, there is an article by John P. McKenzie in which he quoted Mr. Reed, dean of the Law School at Tulsa University, in which he said that he

has just completed a 5-year study of the fifth circuit court school desegregation decisions. You served on the fifth circuit; is that right?

Judge BELL. Yes.

Senator THURMOND. He wrote:

From interviews and analysis, we found Bell "extremely influential" and a leader of the center of a 15-judge court whose members run the spectrum of judicial philosophy.

In other words, he did not find you so far to the right or so far to the left, but in the center of that group of 15 judges.

In the Washington Star of December 22, I quote an excerpt from Lesley Oelsner, which reads "a sampling of his"—speaking of you, Judge Bell—

Opinions and his votes, including both the cases that Bell himself cited at Carter's news conference Monday, and those cited by some of his critics, shows a somewhat mixed record. As numerous civil rights lawyers interviewed Monday and yesterday noted, the opinions themselves do not contain what would be called racism or even strong hints of bias.

I do not believe I have heard anyone accuse you of being a racist, of being biased in your opinions as a lawyer or as a judge.

Judge BELL. I say I hope not. I have been strongly accused, but nobody has gone that far yet, I think.

Senator THURMOND. The article further says:

The sampling showed a number of cases, such as one involving the Voting Rights Act, in which Bell voted to grant the claim of the civil rights advocates.

I just wanted to point those things out for the benefit of the record here.

I have just a few questions here I would like to ask you.

There have been press reports that the Carter administration will seek to institute some sort of merit selection process for U.S. judges and possible for U.S. attorneys.

Judges, as you know, have lifetime tenure, whereas the U.S. attorneys are appointed to a 4-year term, and confirmed by the Senate. Would you mind telling us your plans with regard to those U.S. attorneys currently serving who you find have been doing an outstanding job and whose terms have not expired? Would you retain them until expiration of their terms, or would you seek to remove them from office prior to the expiration of their term regardless of the caliber of their service?

Judge BELL. With respect to U.S. attorneys, we have not worked out a plan to have a selection commission. We expect to work with the Senators in the States on a merit selection basis.

I have asked Judge Tyler, who is now the Deputy Attorney General, to send a message to all the U.S. attorneys and the assistant U.S. attorneys that they should indicate if they want to be retained on the merit system. That does not mean they will be retained, but they will have an opportunity to be considered for retention on the merit system.

I happen to understand, with Governor Carter, that, if I am to be the Attorney General, we want to professionalize the Department of Justice. We want to depoliticize it to the extent possible. Otherwise, I would not care to be the Attorney General; he would not care for me to be the Attorney General, either. His ideas and mine are the same on that.

If there is a U.S. attorney who warrants retention on the merit system, as others who would be up for consideration, we would certainly give thought to retaining them. Otherwise, we would not be putting in a merit system.

Senator THURMOND. In other words, as I understand your position, if a U.S. attorney has made a competent and meritorious record as U.S. attorney, and if he desires to be retained, then you would give most careful consideration to him?

Judge BELL. That is exactly right.

Senator THURMOND. And you intend to establish a merit system, and this would be in the line with such a merit system?

Judge BELL. Right.

I think if we are really serious about doing something about crime in this country, then we must go into some career service in the prosecutorial forces; just like we have a career service in the investigative area. I do not believe that we can make any progress until we do this.

This is just one phase of being serious about doing something about crime and about having a Federal criminal justice system and policy. That would be part of it.

Did you want to know about the district judges?

Senator THURMOND. How is that?

Judge BELL. I do not believe you asked me about district judges: excuse me.

Senator THURMOND. Go ahead and express yourself.

Judge BELL. I was going to say, on merit selection of judges—somebody is probably interested in this, so I might as well answer this now—we hope to have at an early date a system worked out where there will be a merit selection commission or committee in each circuit which will receive applications from all who want to be considered for vacancies on the circuit courts of appeals.

The present plan is that they would come up with five names, five nominees for the President; and the President will take one of those. That was the system we used in Georgia when Governor Carter was Governor there: it worked very well. He would name the members of those circuit commissions.

This would enable us to have a merit system. Of course, the senators would retain their prerogative of saying that they did not like the nominee or did not like any of the nominees. There would be no disturbance of the present relationships under the Constitution where the Senate advises and consents.

With district judges, we are going to leave the selection just as it is, with the Senators. But we are hoping, if the Senators themselves would want to go to a merit selection commission: which would mean that if you had one in a State, then all who wanted to be considered would be considered.

If that regard, I have gotten a word now from several Senators who want to go into that system. I plan, when I can finish these confirmation hearings, to start working with the Senators who are interested and try to put that into effect.

Some Senators will not want to do it: some will. Eventually this is a way the whole judicial selection will go in this country, on a State basis and on a Federal basis. It is something we are working into and we are making some progress.

Senator THURMOND. Chief Judge Brown has been quoted as calling you the "father of the screening and expediting procedures of the Fifth Circuit."

Describe how these procedures work.

Judge BELL. The statistics that the Congress follows in allocating judges entitled the fifth circuit 4 years ago to 22 judges. We already had 15, and we found we could not function with more than 15. We had difficulty functioning with 15 and maintaining the court as an institution, which is a very important thing. The court must be an institution, as distinguished from panels deciding things in conflict with each other.

So we were faced with an increasing caseload. We decided that we ought to do everything that we could do which was humanly possible to handle the caseload.

We knew that we could not have oral argument in all cases if we were going to do that. So we set up a system where, if three judges agree after the briefs and the records are circulated to the three judges, and they are unanimous, then you can take the case off the oral argument calendar and decide it on what we call the "summary" calendar.

That means that there will be no oral argument. That saves a lot of time, particularly in a court that is scattered like the fifth circuit is over such a vast area from Texas to Florida.

We then worked out another system like this. There are many cases where you do not need to have an opinion. You can decide them by order. We formulated something called "Fifth Circuit local rule 21," which has been adopted now by many courts over the country.

That provides standards under which you can decide a case by order rather than by written opinion. This enabled the productivity of the Fifth Circuit to be increased, I think, maybe 40 percent above that of any other Federal appellate court in the country.

There has been some dissatisfaction about this, I might add, from the bar. It is not about not having written opinions, but from denying oral argument. But we have spoken to various judges and to all the bar associations in the circuit about how it works.

I think it is being accepted on the basis that if we did not do this, the court would break down. We have tried to get the fifth circuit divided a time or two, and that never has been able to work out. If it ever is divided, then you could have some more judges. You could have two courts that could accommodate the caseload but right now they are falling behind. I am sorry to say that.

The Ninth Circuit is drastically behind.

Senator THURMOND. Judge, what has been your role as a director of the Federal Judicial Center?

Judge BELL. The Federal Judicial Center was created by the Congress to be the research and development and training arm of the Federal courts. There are five judges on the board of directors. There are two circuit judges. I was one of the two. There are two circuit judges and three district judges.

Then there is the director and, of course, the Chief Justice is the Chairman of the Board. We go into anything that would improve the administration of justice. They do good work there. They have

a small staff over in the Dolley Madison House on Lafayette Square. I am very proud of the job that they have done.

Senator THURMOND. Judge, could you describe your work as Chairman of the Atlanta Commission on Crime?

Judge BELL. I was appointed—I was asked by Mayor Allen when he was mayor of Atlanta to take this responsibility because he thought that I would be accepted, inasmuch as I am nonpartisan and holding life tenure.

We study causes of crime and delinquency. We published a book called "Opportunity for Urban Excellence." This is before they had this National Crime Commission. We made 40 recommendations about things that could be done to alleviate crime and delinquency.

One recommendation was to have a metropolitan Atlanta area commission on crime and delinquency to carry out these recommendations. A lot of them have been carried out. We really made a lot of progress until the drug problem descended on Atlanta, as it has over the country. Of course a great deal of crime is directly related to drugs.

We did not make as much progress as we hoped to, because all that was built on top of the problem. Anyway, it was a study of causes of crime and delinquency. We got into the prison system. We learned a lot about that. It was a rewarding experience.

Senator THURMOND. Thank you.

Judge, could you please describe—excuse me; my time is up.

Chairman EASTLAND. Senator Bayh?

Judge BELL. Senator Bayh, I did not get around to answering Senator Kennedy's question about the private clubs; as he said, the country clubs. I would be glad to get back to that when Senator Kennedy gets to me again. I am saying that because I did overlook it, I will respond to it.

Senator BAYH. Judge, I want to add my congratulations on the confidence that President-elect Carter has placed in you. The confidence is well placed.

We are confined, really, in considering your qualifications in looking at your personal life and your personal law practice and primarily your role as a judge.

It seems to me if we are not careful that we might not recognize the fact that the role that you are going to play as Attorney General will simply be a much different role than that of a judge.

I dislike labels. We are all guilty of using them, like activist, liberal, conservative, moderate, right-winger, left-winger. I do not like them because they are used differently by different people, depending upon their own definition.

It seems to me that the role of a judge is to look at a case and interpret the constitutional question involved, basically as seen through the Supreme Court. Perhaps one could describe that as a moderate role.

I would like to feel that the role of the Attorney General is actively to pursue the enforcement of the laws of this country and to make positive recommendations to the Congress and the President as to how they could be changed.

Before proceeding, could you tell me how far from the mark I am relative to that aspect of the Attorney General's responsibility?

Judge BELL. I think you are right on the mark. The Attorney General is a lawyer. His duty is to carry out the law, but you decide what cases to appeal through the office of the Solicitor General. You decide which cases to take to the circuit courts of appeals. You decide which cases to take to the Supreme Court.

You set the tone of the law. You set the development of the law. Of course, in carrying out the statutes and whatever constitutional issues are involved, you are an advocate; which is a role different from being a judge. I recognize that. I was trying to describe my role as a judge.

Senator BAYH. I understand.

Judge BELL. It is not the same.

Senator BAYH. And also, if you are Attorney General, you accept the responsibility you have to look at the laws as they are now and make recommendations both to the President and to the Congress as to how we can make our system function better and where we can perfect it.

Judge BELL. I will. As I have said to a number of Senators as I was around last week making courtesy calls, I want to work with the Congress in developing the statutory law.

Senator BAYH. Judge, I do not want to beat this to death, but I would be less than honest with you if I did not tell you I was concerned about the Carswell letter. Senator Mathias brought that up. He and I and other members of this committee were intimately involved in that decisionmaking process.

I know that is a sore subject, but I think there are some questions that have to be laid to rest, both from your point of view and from ours.

Judge BELL. I did not mean that the Carswell letter was a sore subject. When I said I did not endorse, I recommended—that had been asked me by the press. I think if you just use part of the question and not use it all, then that is what I was talking about.

I am glad to answer the question as best I can.

When I die, I am sure they will have on my tombstone: "He wrote a letter for Judge Harrold Carswell."

I will have to keep answering it. I want to answer it. I want to answer it the best I can, so go ahead.

Senator BAYH. Perhaps I should not take issue, as a very neophyte lawyer who happens to be sitting on the Judiciary Committee, with a man who very likely will be the next Attorney General of the United States, but I would hope that what they will put on it is: "Here lies a good Attorney General."

Judge BELL. That would suit me a lot better.

Senator BAYH. The whole Carswell chapter is sort of a sorry chapter in the history of jurisprudence and in the nomination and confirmation process. It involved, I think, the executive branch acting irresponsibly; it caused some of us to have to get involved in a way in which great damage to individuals was probably involved. I do not like this, but that is one of the responsibilities we have if we believe in the advise and consent process.

I am not so concerned about what is past history, Judge, as I am about some of the basic principles involved in the Carswell decision. I am interested in his background and his legal competence so far as they are relevant today.

I am wondering about the standards and test criteria that you would apply as the man who will recommend to the President and ultimately to the Congress the quality of Federal judges that will serve this country, and U.S. attorneys, and all the other appointments that go through the Justice Department.

If you look back, Carswell's confrontation was the result of a Supreme Court nomination. I would think if we could do the job in the first instance of screening out those who have inferior intellect and value judgments, we would not have to worry about the Federal judge to be a circuit judge or to be a Supreme Court judge. We could make that decision earlier on.

I ask this question basically because I want to try to look in your mind. I must say I have been pleased with the personal conversation we had. I want to get resolved, in the final analysis, will you be a good Attorney General.

So I would like for you to look back on that Carswell case. I am sure that it did not assume the kind of proportions to you, nor should it necessarily sitting down there in the Fifth Circuit, as it did to us here who were surrounded by it 24 hours a day.

You are familiar with that January 26, 1970, letter. You are familiar with the telegram of the 29th. I will not read the letter in whole, but the reason I am concerned is that it says some rather strong things about Judge Carswell: "His character and integrity including intellectual honesty is of the highest order. His intellect and ability are also of the highest order," et cetera. "I recommend Judge Carswell for confirmation without any hesitation or reservation whatever."

You mentioned you knew the man 24 years. He was a law school classmate. Was it this kind of a personal involvement that caused you to send that letter and sign that wire?

Judge BELL. Well, as I say, we were friends and classmates. I had written letters for him when he was up for appointment as a district judge. I wrote one when he was up for circuit judge. He was up twice for circuit judge. He was up once, was considered, during the Johnson administration. I am not certain I wrote a letter then; I may have. I had nothing to do with that. Some other people were helping him.

He did not get appointed to the circuit court then. He later got appointed in the Nixon administration. At the time he was nominated for the Supreme Court, there was some speculation that I would be nominated. There were two Senators from the South who said something; that is, they told me about it. I do not know if they spoke to the President, but they may have. I think they did.

At any rate, there was some contest actually between the Carswell forces and these two Senators who had some regard for me. I was made out to be much of a liberal. This was not in keeping at all with the current philosophy.

A few days after that, they did nominate Carswell; and he asked me to write this letter. As I say, I had written them before for him.

At that time, whether it was a parochial thing or what, based on his good reputation, most everybody on the Fifth Circuit was writing letters for him. Everyone was. In fact, the former chief judge was getting ready to testify for him right at the same time I wrote this letter. He decided later he would not testify for him.

I signed the telegram after that. At this time, when the letter was written—and I think maybe we are somewhat parochial in the South, if we have one of our own number that was up for the Supreme Court, it was a great honor for the Fifth Circuit. So I think we all had that view. I know I did.

Let me just add one thing. If you will read that letter, you will see that the key thing in it is a sentence about his experience as an attorney and as a trial judge. I tried to think of something that he would bring to the court that would be justification for his being on the Supreme Court. That one thing in there you will see, there was no one on the court who had ever been a U.S. attorney or had been a district judge 11 years.

We had had experience in the Fifth Circuit, once when I joined, when we had no former district judges and later we got some in that made the court better. I thought that was a legitimate and logical reason to write the letter.

I have been criticized more for saying I endorsed him without reservation, or whatever it is at the end of that sentence, and maybe that is a little too much rhetoric at the end of that sentence, but I have said that about a number of people other than Judge Carswell.

Senator BAYH. Judge, I can understand the provincial pride and the feeling of one's peers on the bench. Many of them are involved in this kind of movement. I can understand that you would want to, if you went to school with a man, if you have been in his home; I can understand that. I might have established a different test myself. I do not know; I have not been confronted with that.

Judge BELL. Let me say one more thing. I think this will allay your fears. As the Attorney General, I would have a heavy responsibility to screen people for judgehips. Writing a letter for somebody is one thing, but having the constitutional and statutory responsibility to screen people for judgehips is a wholly different duty. I know that is what is bothering you.

Senator BAYH. That is exactly what is bothering me.

Judge BELL. I am on to the point; that is bothering you.

Senator BAYH. I have to admit here that everyone around this table, and particularly myself, who was involved very much in this, is in a much better position to judge Judge Carswell now than when President Nixon sent his nomination. I would assume that you could make an assessment of his qualities now that is better than you could before.

So I bring this up only to try to lay a foundation for the criteria that you would establish or require of appointments in the future.

For example, if in the F.B.I. report and in the press reports it was disclosed that a prospective nominee had made very strong racist statements or had exhibited racist tendencies, would you recommend that man to the President of the United States?

Judge BELL. I would want to study him to see if he had changed. If it had been something that happened 20 years before, I would not want—we do not have, what do you call it, the tainting by blood, we do not have that in this country. We have redemption, and he might redeem himself in the 20 years. It is according to what he had done. I would study that carefully.

In that case, we all thought—I thought, and I think a number of other judges thought—that he had changed and demonstrated that he had changed on that.

Senator BAYH. Judge, I thought he had also. My first reaction in discussion with a group of minority citizens was: Give the man a chance. It is 20 or 25 years ago. A lot of things have happened in the country. We are all more sensitive now. So I can understand that.

Let me move on to another thing. If you found the racist statements and you also found a man who, while he was a U.S. attorney and a Federal employee, was involved in a movement to take a public country club and make it into a private club with the specific role to subvert the prohibition that the Supreme Court had laid on segregation in public clubs, then how would you look at that man?

Judge BELL. That is where the trouble started in his record. I have not reviewed all of that. As I remember, he did deny that he did that? It seems to me he denied that. That is where some of the witnesses left him. I never knew——

Senator BAYH. Let's get Carswell out of the question. Let's set up hypotheticals.

Judge BELL. I would not condone that at all. If a U.S. Attorney went out and helped somebody to convert a public golf course to a private club. I would not condone that whether it was a U.S. attorney or anybody. You cannot do that. I have made rulings of that sort.

Senator BAYH. There is no way——

Chairman EASTLAND. Senator Bayh, your time is up.

Senator Scott?

Senator SCOTT. Thank you, Mr. Chairman.

Judge, I would like to add my word of welcome to you on the part of our committee. When were you admitted to practice law?

Judge BELL. Some day in August 1947.

Senator SCOTT. How long did you practice before you went on the bench?

Judge BELL. Fourteen years, approximately. The reason I can remember, the American Bar Association had a rule that you had to practice 15 years to be considered for the circuit court. I had 14 years.

Senator SCOTT. We have a group that rate members of the bar as to their legal competence. How did they rate you before you were elevated to the bench?

Judge BELL. I had an AV rating, which is the highest rating.

Senator SCOTT. Then you served on the bench for 14½ years, I believe you said. Why did you leave the bench?

Judge BELL. Well, I wrote a letter to the President; I also filed an affidavit in a judge's suit. The gist of it is that I found it not to be a rewarding experience any longer. Whether it was because there was no more excitement after the 1960's, or whether it was because the case load changed, but the work load was oppressive. I would not have minded the work load, but the character of the cases changed. It was almost like serving on a criminal court. I did not want to do that any longer.

Senator SCOTT. Did you return to the practice of law after that?

Judge BELL. Yes.

Senator SCOTT. What sort of a rating did you get after that?

Judge BELL. You mean from Martindale?

Senator SCOTT. Yes.

Judge BELL. The new book has not come out, but I received a letter that they had restored my AV rating.

Senator SCOTT. What do they base the rating on? I think it is rather common knowledge among lawyers, perhaps I should say that. Is it not based on those that you practice with and those that are in your general area, and their regard for you?

Judge BELL. The other A lawyers in the community vote on you. You can only be admitted by the A lawyers. And V means the highest integrity.

You cannot get a rating, even if you are B lawyer or a C lawyer, unless you can get the V to go with it. That is an important thing for a lawyer.

Senator SCOTT. Senator Bayh was referring to concern about the type of judges that might be selected with you as Attorney General. As I understand it, the Deputy Attorney General is your chief assistant. He does have a responsibility for advising you in that field.

Have you decided whom to recommend to the President for appointment as Deputy Attorney General?

Judge BELL. No, sir, I have not.

If I am confirmed, I plan to rearrange the Justice Department in a way where the Deputy would not be handling that duty. I would be handling it myself. I plan to rearrange the functions so that the Deputy Attorney General will be in charge of all matters having to do with crime. He will have the FBI, the LEAA, the criminal division, and all of the U.S. attorneys' offices, and he will also be responsible for tax fraud cases and antitrust criminal prosecution.

Senator SCOTT. He will still be the No. 2 man and would be acting Attorney General in your absence?

Judge BELL. Right.

Senator SCOTT. The No. 3 man would be the Solicitor General. Some concern was expressed a few minutes earlier about the handling of lawsuits and the making of decisions with regard to whether a case should be appealed.

A I understand it, by virtue of stature, the Solicitor General makes this decision rather than the Attorney General. If that is the case, have you reached any decision as to whom you may recommend for Solicitor General of the United States?

Judge BELL. I have selected a Solicitor General, subject to my being confirmed.

Senator SCOTT. Would you care to tell us who that is?

Judge BELL. The person I selected is a sitting Federal judge.

Senator SCOTT. Can you tell us what color he is? [Laughter.]

That is a pertinent question because you are being criticized and being attacked by people from a specific race. I am not saying that they alone are criticizing you, but I happen to know who you have in mind. I just think it ought to be public.

Judge BELL. This was a great secret between this judge and me.

Senator SCOTT. In Washington, there are not many secrets.

Judge BELL. I understand that. The next thing I knew, it was in the paper. But it was not the judge who let it out, nor was it I. I told somebody. Of course, that was the end of the secret.

I will be glad to say who it is. I say it in this context. This judge is sitting on the U.S. Court of Appeals for the Sixth Circuit. He has told me that if I am confirmed, he will accept the appointment as Solicitor General and at the time he does that, though, he will say that he will resign from the court. I think it would not be improper to say that.

I would not say it, I think, except it is out. It is such a public thing, maybe I ought to say it. It is U.S. Circuit Judge Wade H. McKree, Jr., Sixth Circuit, which is headquartered in Cincinnati. He lives in Detroit.

He is one of the most distinguished jurists in America. He is a scholar. I have no doubt that he would be one of the great Solicitors General.

I am sorry that got out because I prefer to be confirmed on my own record. It is quite easy—If I told everybody I talked with, if I placed in advance who I was going to appoint, I would not be the Attorney General; somebody else would be the Attorney General. I would rather not be the Attorney General than to go in on somebody else's record. I do not think a Nation needs a weak Attorney General. That happens to be the way I feel about it.

Senator SCOTT. Judge, I agree with the thought you are expressing. Yet I feel that when allegations are made against you that perhaps even border on racism and you have already selected one of your chief assistants who happens to be a black man, then I think that is something that should be brought out in hearings of this kind.

Judge BELL. Let me say this. I have not selected anyone else. So there is no reason for the press or anyone else to speculate. I have learned my lesson with that one person.

Senator SCOTT. Some mention was made of your going into Virginia. As you know, I represent Virginia. During the period of massive resistance, did you in any way participate in Virginia's massive resistance program?

Judge BELL. Not at all. I went there and visited with the attorney general of Virginia, whose name is Albertis Harrison. He is now a member of the Supreme Court of Virginia.

Senator SCOTT. Subsequently Governor, right?

Judge BELL. Yes; he was Governor between times. I may have visited with Governor Lindsey Almond, although I am not certain of that. I knew Governor Almond from time to time during those years. I am not certain that I saw him on that occasion, but I may have. I know I visited with the attorney general, Mr. Harrison.

Senator SCOTT. Were you there to ascertain what Virginia was doing, or were you there to advise Virginia?

Judge BELL. I was there not to advise, but find out what their views were in light of *Cooper v. Arends*, the Little Rock case. That was a time when everybody knew that something had to be done. I was just checking in with them to see if they had any ideas.

After I went to these places, I remember Governor Vandiver asking me what I found out. I told him: "Not much." Nobody knew much more about it than we did.

Senator SCOTT. Judge, I think the central question might be this: Do you favor equality for all citizens before the bench? Do you favor

equality of opportunity? Would you make distinctions because of a person's race, religion, or anything of this nature?

Judge BELL. I never have. My life is an exhibit of a person who has enforced the equal protection of the laws. I have spoken on it a lot of times.

I have often said that if we did not have the equal protection clause in the Constitution, we would have to make up one. The country could not hold together without the equal protection clause.

Senator SCOTT. As Attorney General, in the event that you are confirmed as Attorney General, and I believe you will, do you intend to follow that practice?

Judge BELL. Absolutely.

Senator SCOTT. Thank you, Mr. Chairman.

Chairman EASTLAND. Senator Burdick?

Senator BURDICK. Judge Bell, I would like to congratulate you on your nomination.

I might tell my colleagues that Judge Bell is no stranger to me. He has been before a subcommittee I chair several times on various judicial matters.

Judge, I found you a learned man of the law all those times.

Judge BELL. Thank you.

Senator BURDICK. And now we are here in a different role.

I also want to say that I agree completely with what Senator Nunn said about you; that is, that you were in the arena. I want to commend you for the role you played in a very difficult period of history in your State of Georgia.

The desegregation orders, I think, numbered 141 that you issued. That impresses me very much.

I have two questions that deal with the mechanics and workings of the Congress. If you care to answer them, I will give them to you now.

Judge BELL. All right.

Senator BURDICK. During the last Congress you testified before the Subcommittee on Improvements in Judicial Machinery, which I chair, on a bill S. 1110, which proposed to set up a method of reviewing complaints about the conduct of judges performing their official duties, and a proposal which would authorize the censure, removal, or involuntary retirement of a judge who is found guilty of misconduct.

If you are confirmed as Attorney General, what position will you take at the Justice Department on that kind of legislation?

Judge BELL. I am committed to the Nunn bill, which is S. 1110. We have legislation of that sort on the books in many States. It is an idea whose time has come.

You know I testified that I thought there were two or three changes that ought to be made in that bill. They were made. The last draft I saw of it, it seemed to me to be in pretty good shape. I believe it was voted out of the subcommittee.

Senator BURDICK. You have the same opinion?

Judge BELL. I have the same opinion.

Senator BURDICK. Do you believe there is a need to improve the delivery of justice to the people of this country; if so, what ideas do you have to accomplish such improvement?

Judge BELL. I definitely think that we are going to have to improve the delivery of justice. Those of you who are interested in the delivery of justice might read the Pound Conference followup task force report; the first part of it is something that I conceived. That is a neighborhood justice center.

Our country has changed. People live in urban areas. It is a long way to the courthouse ordinarily. You need to have a neighborhood justice center where people can go with their problems.

You do not need to try all cases. Some can be arbitrated. Oftentimes they can be mediated. Even in other times, a person working as a fact finder can solve the problem. We need to get into this.

The American Bar is moving into this area now, trying to find some funds with which to experiment on some model neighborhood justice centers. They thought about putting one in Atlanta. They have got one they are working on trying to set up in Nashville, Tenn. Somebody in San Jose, Calif., is working on one. This is something we can do; we need to do it.

Our country from its inception relied on justices of the peace. When I was a small boy in a rural area, the justice of the peace was where most people resolved small claims and small problems. People moved to town and we did not bring the justice of the peace to town.

We have got to have something on the idea of a neighborhood justice center to take the place of what we once had in this country. Our country has changed. The law and the judicial administration vehicle have not accommodated to the great shifts in population. That would be my idea about that.

Senator BURDICK. If your confirmation is approved here, you will be called before the committee to respond further on these legislative things.

At this juncture, as a good lawyer, I will wait until the rest of the witnesses are heard and testify. You are doing all right so far.

Judge BELL. Thank you.

Chairman EASTLAND. We will recess now until 2:30.

[Whereupon, at 11:57 a.m., a recess was taken.]

AFTERNOON SESSION

Chairman EASTLAND. The committee will come to order.

Senator Heinz, you may proceed.

Senator HEINZ. Thank you, Mr. Chairman.

Judge Bell, welcome to the Judiciary Committee.

You and I have a great deal in common here. First of all, I think this is the first time you have appeared before the Judiciary Committee, and this is the first time I have served as a member of it.

There the similarity ends. You are a lawyer, and I am not. I think I may be the first nonlawyer to have served on the Judiciary Committee, even though it may be on a temporary basis, since a considerable time ago.

I not only welcome you to the committee, therefore; I think we have much in common.

I would like to ask you some questions that pertains to some of the standards that President-elect Carter set for the position of Attorney

General during the campaign. On several instances, I believe it is fair to say that he was quoted as saying that he wanted the Department to be as far removed from politics as it could possibly be. He wanted his Attorney General to be nonpartisan.

I think that is a standard which we all believe is an excellent standard. It may be very difficult to attain in many respects because it is difficult to make distinctions between what is partisan and what is political.

When your predecessor, Mr. Levi, was before this committee, I note from the hearing record that he was asked similar questions, and he was quite candid in pointing out to this committee that to be nonpolitical in the sense that you could not take into account the wishes of the public, the wishes of the Congress, the considerations in other branches of government would not be practical.

Nonetheless, we have been through a period—one which we have experienced with some regret—where some Attorneys General have been regrettably political.

I am wondering what steps you will take to avoid some of the mistakes of the past?

Judge BELL. Governor Carter has said that he wanted to appoint an Attorney General who was nonpolitical. On one occasion I think he said he would appoint someone who had no major role in his campaign.

I want to be perfectly candid with the committee about this. Governor Carter and I have been friends for a long time. I think perhaps he has some respect for me as a lawyer. During the campaign the few things I did all had to do with the role of a lawyer. I prepared the questionnaire which was used in propounding questions to the people who were being interviewed to serve as the Vice Presidential candidate. I think that is the first thing I did which had to do with the campaign.

On one occasion I wrote a legal memorandum on the difference between a pardon and amnesty. I helped prepare the speech that Governor Carter gave at the annual meeting of the American Bar Association in Atlanta. I helped prepare the speech that he gave on crime in Detroit toward the end of the campaign. It was probably the latter part of October.

I may have done some other things, but they do not come to mind.

I did raise some money at one point. It was during the Pennsylvania primary which would have been in April or May. I was back in the law firm. They had a Georgia fund raising. They were trying to raise money in Georgia.

I was asked for advice because we were not having too much luck getting up money, and I suggested two people who could serve as chairmen of a breakfast. A lot of businessmen came, and other citizens, to this breakfast. Governor Carter came. They raised some money on the basis that the quest for the Presidency was a Georgia undertaking and that it was almost a chamber-of-commerce-type approach.

Everybody was asked to give some money. Most of the money for Governor Carter that was raised was raised in Georgia. I had that role in that breakfast, and I also, myself, gave \$1,000 to the campaign at that time. I have forgotten how much money was raised. It was something like \$100,000 or \$125,000 which they used in the Pennsylvania primary.

I think that is the extent of my role in the campaign although I am sure I was available if they needed a lawyer.

Senator HEINZ. Would it be fair to say that you were considerably less active in Governor Carter's campaign than you were in President Kennedy's campaign?

Judge BELL. I was the manager of the Kennedy campaign. But I had been gone a long time on the bench. I think the politicians of today think that I don't understand politics. There is supposed to be a new kind of politics going. No one would want my services now.

Senator HEINZ. What steps can you take to insure that not only yourself but that other members of the Justice Department, for which you would be responsible, of course, would be nonpolitical? Have you considered what you would do in terms of logging contacts between the Justice Department, the White House, and other inquiries of this nature?

Judge BELL. I was going to look at the logging system we have now and make it fail-safe on the contacts between the White House and the Justice Department. I am considering expanding it if it needs expanding to include all political contacts, and perhaps all contacts. I think that the Justice Department is a place in which people must have confidence.

I am going to go into the logging system.

I had an understanding with Governor Carter before I took this job and the idea of my becoming Attorney General took several days. I had not sought the Office of Attorney General. I was very happy practicing law and I have given 19 years to Government service already counting the time in the military in World War II.

We had some understanding. One was that the Justice Department would be operated on a nonpolitical basis. I think I understand how to do that because I was a judge for 14½ years. Certainly, that was operated on a nonpolitical basis.

I intend to operate it on that basis. I intend for the Justice Department to be operated within the strictures of its being a law department which would have nothing to do with politics. Of course, you touch politics because you are advising people, but it will not be a medium of politics; and it will not be used for political purposes.

I would rather not be Attorney General than to have it turn out otherwise.

Senator HEINZ. Without meaning in any way to question your good faith in the matter—and I certainly do not mean to do so—would you be willing to make a commitment to this committee that you would log and insist on the logging of your chief of staff or chief deputy as to all contacts with the White House? Would that be a personal commitment that you would be willing to make?

I am not asking you make it, but would you be willing to do it?

Judge BELL. I want to do that. I will be willing to commit to that.

You did not mean to go into conflicts of interest?

Senator HEINZ. I will get there if I have enough time. If I don't, I am sure somebody else will help us both out.

Judge BELL. Thank you.

Senator HEINZ. My next question is rather related to the task that you set for yourself in making the Justice Department nonpolitical. That is your thoughts on the continuation of the special prosecutor.

namely someone to root out corruption in the executive branch should it exist.

What are your views on that? It has been a subject of controversy in the Congress and the press.

Judge BELL. I have made public statements on that. I favor the special prosecutor who is appointed by some triggering device but not as a permanent office. I am afraid if you had a special prosecutor on a permanent basis, you might have two Justice Departments. It may be that I am wrong about that because it is difficult to work out the triggering mechanism, but I would like to think that if the Justice Department were run in the proper fashion, then there would be no need for the special prosecutor. The public could then rely on the duly constituted Justice Department.

But if it is possible to have some triggering mechanism that is feasible and workable so that under certain circumstances you could have a special prosecutor appointed, perhaps by a court, then I would favor that over having a permanent office of the special prosecutor.

Senator HEINZ. Thank you.

I would like to inquire into another area which you mentioned a moment ago, Judge Bell, conflict of interest.

It seems particularly relevant in this instance because you come before the committee not only with substantial credentials but directly from the practice of law in a law firm that must be a good one because you have some very substantial clients. Among them is IBM which is currently in litigation with the Justice Department on an antitrust case, with Coca-Cola being one of the other clients. I guess not everyone drinks Pepsi-Cola.

I think probably the questions I would ask would relate to: Have you made, or do you intend to make, a financial disclosure? Have you made, or will you make, the terms of settlement with your law firm public? What standards would you seek in setting those terms of separation upon yourself, should at the end of 4 years, 8 years, you decide to return to the private practice of law?

As you know, one of the things that the President-elect proposed on January 4 in terms of conflict of interest legislation was that there should be a waiting period of either 1 or 2 years—depending on circumstances—of how someone should conduct themselves with respect to any Federal agency, with respect to representing a client for the Government; and in the case of a law firm where members of that law firm are, indeed, partners.

It would seem to me to raise a difficult question as to—were you to rejoin your law firm after your service—what would be the nature of their restraints on them, the partners, by virtue of your rejoining them?

Judge BELL. That is a large question. It will take me a little bit to answer it.

Senator HEINZ. I recognize that, Judge Bell.

Judge BELL. There are certain Federal statutes now that govern conflicts of interest. They apply to lawyers and nonlawyers.

You cannot ever participate in anything after you leave that you had a personal participation in while you were there. For 1 year under the statute you can't participate in anything that was within your general jurisdiction. Of course, that is very broad in the Justice De-

partment. I mean that which was in your general jurisdiction 1 year before you left.

Governor Carter's special regulations have extended that to 2 years post; that is, after, I would be bound by that. I don't think that for a long time after that I would get into anything that was before the Justice Department because I made a rule that I wouldn't go in the fifth circuit when I left. I had no problem making a living because there are a lot of other courts besides the Fifth Circuit to go into.

I have a statement here that I can read into the record as to what I am going to do about clients, law firms. I am not going to participate in any matter in which the firm of King & Spalding was in. My son is a lawyer in Savannah. His firm is called Lee & Clarke. I am not going to participate in any matters in which his firm appears.

I am going to enter a directive about matters involving certain clients, retained clients of King & Spalding or regular clients, which is defined in this statement, in which they are involved. They will never come to my attention. They will come no higher than the Deputy.

I am going to see that the other lawyers in the Justice Department do the same thing.

This is a complex area. It is becoming more and more difficult for lawyers in the private sector to come into the Government.

I was the partner in the firm in charge of conflicts before leaving. I have had three lawyers in the firm working on this, and we have this statement here. If you would like me to read it now, I will. It would probably be a good thing to read because it is a big issue. It is a page and one-half.

Could I read it?

Senator HEINZ. Mr. Chairman?

Senator ABOUREZK [acting chairman]. Go right ahead.

Judge BELL. Before I read it, let me say this.

As of December 31, I withdrew from the partnership as a senior partner and became counsel to the firm for the period of time during which these confirmation hearings are pending. If I am confirmed, I will automatically be out. I will receive no further payment. If I am not confirmed, I intend to go back into the firm.

Senator HEINZ. Let me, if I may, Mr. Chairman, make a suggestion.

Perhaps it would be possible to have the statement placed in the record and copies of it distributed to the membership. It is not my wish to slow down the proceedings of the committee.

Senator ABOUREZK. That will be fine.

Judge BELL. I will paraphrase, and we can have copies made and distributed.

Senator ABOUREZK. Without objection, so ordered. That will be included in the record at this point.

[The statement referred to follows.]

STATEMENT OF GRIFFIN B. BELL, ATTORNEY-GENERAL-DESIGNATE

Upon my confirmation as Attorney General of the United States, I shall disqualify myself by an appropriate written Department of Justice directive, which will be made available to this committee, from all of the following:

1. Any case in which I participated as a Judge while serving on the United States Court of Appeals for the Fifth Circuit.
2. Any matter in which any party directly involved in such matter is represented by either King & Spalding or Lee & Clark.

3. Any matter as required by 18 U.S.C. § 208.

4. Any matter in which King & Spalding represents any party which representation in such matter existed during the time that I was a partner (March 1, 1976 through December 31, 1976) in King & Spalding including, but not limited to, any such matters in which I participated personally and substantially.

5. Any matter involving any party which pays King & Spalding a regular monetary retainer.

6. Any matter involving any party which is regular client of King & Spalding.

7. Any other matter if I deem that it is in the best interest of the United States of America that I, in my sole discretion, so disqualify myself in order that my conduct should be free from impropriety and the appearance of impropriety.

8. For the purposes of Paragraph 6 "a regular client of King & Spalding's" means that the client that has made a substantial financial contribution to the gross fees of King & Spalding on a regular basis over a significant number of years.

9. For the purpose of this statement, the term "matter" means a judicial or other proceeding, application, request for ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter.

Judge BELL. I am aware, to sum up, of the conflicts problem. I would hope to avoid any conflict. I would hope that for any lawyer coming in—there will be other lawyers coming in who have clients. They will have to be on guard themselves.

Now, with respect to going back to the law firm, as you know it is against the law to make any kind of an agreement. I think it is a statutory violation to make any kind of an agreement to go back to any law firm, any place. I have no such agreement.

If I don't disgrace myself in this job or am not run out of Washington in some way, I would hope that I would be able to make a living doing something. At one time I thought I might have to go on welfare in order to serve the Government, but I have worked it out now in my mind where, if I seek a job, maybe I can find one. I am not looking for a career in this job.

You asked about Governor Carter's views on depoliticization, that is, not appointing somebody who is in politics. He wrote one paper early in the campaign where he said that he would hope that the Justice Department could be reorganized and reconstituted in a way where we would have a career Attorney General. He suggested they might have a fairly long term of office and that he or she, as the case might be, would not be removed except upon a vote of a group—like the special Watergate Prosecutor—of the President, the chairman and ranking member of the Judiciary Committee of the House and the Senate, something along that line.

That would give the Attorney General some independence and make him truly independent.

If we get to that point, I doubt very much whether I would want to be the career Attorney General. I am more of a reorganization man, myself, and a cleanup man. I am a policy person, I hope. But if we got to the place where we were going to have an 8- or 10-year term for Attorney General, I suspect I would not be here.

Senator ABOUREZK. Mr. Bell, I guess it is my turn.

I first of all want to welcome you to the committee and to congratulate you and Governor Carter on your selection. I must say that I have come a long way since I first came to the Congress in 1971. I have served under former President Nixon and former President Ford. I have never been around when a Democrat was in the White House. I have to be honest with you, when Nixon made appointments to the

Cabinet, I would not even speak to the people he appointed. I saw you in my office, and we had a nice visit; and I enjoyed that very much.

Judge BELL. Thank you.

Senator ABOUREZK. So I personally have mellowed a great deal in that regard. [Laughter.]

I have found out that it is extremely difficult for me, as a Democrat, to question in a very serious way a Democratic nominee. I thought about it a long time. It, really, is a very difficult thing to do because on the one hand I want to wish Governor Carter and yourself extremely well, yet on the other hand I have a responsibility as a U.S. Senator to try to lay out on the record questions of policy and so on that would determine, both for the Senate and for the public, whether or not your policies as Attorney General would be the ones that would be agreed to by a majority of the country.

In that regard, I don't have to tell you about the controversy. You are the closest thing they have to controversy nowadays. I refer to the controversy you stirred up among certain groups, civil rights groups, women groups, and so on.

I want to try. I really am not crazy about going back into your record, except to the extent that I have to try to determine what your policies would be by doing so. I hope you understand the distinction. I don't want to beat something that happened 10 years ago under different circumstances, but if I refer to it, it means I am going to try to find out if your positions have changed and what you would do today under a different set of circumstances. I think that is what is important.

Judge BELL. Right.

Senator ABOUREZK. You talked a little bit this morning about your efforts in the desegregation fight when you worked as an assistant or a special counsel to Governor Vandiver.

I am given to understand that the Governor, Governor Vandiver, proposed a great deal of outright segregationist legislation which, for example, gave the Governor the power to close public schools to prevent integration. Is that understanding correct, first of all?

Judge BELL. I think that is right.

Senator ABOUREZK. Can I ask what your role was with respect to that legislation?

Judge BELL. Well, the massive resistance plans that Georgia had were already in effect before Vandiver was elected Governor. At the time he was elected, as I said this morning, it became clear from *Cooper v. Arends* that you couldn't sustain that position.

I was a lawyer practicing law in Atlanta. I was called on to be chairman of the lawyers committee in order to advise him. We did advise him on what the status of the law was, that is, that the schools had to be desegregated.

The laws that were passed, if you will notice, were not as severe as the laws that were on the books then. But, whatever was done, everything that was done was done to keep the schools open. It is hard to sit here now and think about a whole State that was going to go out of the public school business, but that was the issue—how to keep the schools open.

And, of course, the Governor had in mind the fact that he had made these campaign pledges. All that was working together.

The first law was changed from shutting down a district to shutting down one school. Then the controversy became how to have local option and let the people vote on how they wanted to keep their school district open or not. Then, finally, we came to desegregation. That took awhile. There was a good deal of rhetoric in that, but you will not find any rhetoric from me because I was not a political leader. I was a lawyer.

I think if anybody has searched the record—I know they have been searched. Even somebody came from Texas to check the title on my home last week to see if I had a restrictive covenant in my deed. So I don't believe anybody has left anything unturned. I don't think you will find where I ever made any statements.

Whatever delays there were and whatever laws there were, everything was done to keep the schools open. That was done. That was accomplished.

Let me add one other thing. This will interest you since you came in 1971.

When I was up for appointment to the U.S. court of appeals in 1961, there was some inquiry made by the NAACP at that time of the then Attorney General. He told them to find out if there was anything in my record that would indicate that I ought not to be a U.S. circuit judge. They never came back. This is what the Attorney General then told me.

John L. Seigenthaler was there at the Justice Department then. I asked him about this. He remembers this. No one came back and when I came here to the hearing for confirmation there was not a single objection.

Now if I were such a bad person while all that was going on, Why was there not an objection? The truth is that I was a moderate person. Nobody would object to me at that time.

I feel like there is some revision going on in history.

To answer your question, all of this was done, whatever was done—there were no statements by me, I was acting as a lawyer—it was done to keep the school open. There are hundreds of people in Atlanta and in Georgia who know that.

Senator ABOUREZK. What you are saying is that in essence the legislation—Did you draft the legislation that we referred to?

Judge BELL. I don't remember drafting any of it. It is highly unlikely that I did. There were drafters in the Attorney General's office. They had a drafting unit in the legislature. I cannot remember drafting any.

Senator ABOUREZK. Well, then you worked on conceptualizing it? Rather than the technical drafting?

Judge BELL. Right; I was one of the four lawyers who were advising.

Senator ABOUREZK. Your statement is, though, that, however segregationist the legislation was, it was less so than what was on the books?

Judge BELL. That is right. That is my statement. And it was all done in an effort to move—

Senator ABOUREZK. Just a minute.

I want to warn the audience not to interrupt as whoever did just then. This is a very serious matter. We have to try to move it along as best we can.

Excuse me; go ahead.

Judge BELL. I was just going to reiterate that all of this was done in a time of great stress, a tumultuous time. There were people demonstrating. The night we had the meeting of the lawyers at the mansion to decide what to do about the court order in the *Atlanta schools* cases, there was a segregation march and demonstration in front of the mansion and chanting and that sort of thing. It was just an unusual time in our history.

Looking back on it, it was sort of a privilege to have a part in it because most sections of the country never went through anything like that. I was in it. I was in the middle of it.

Senator ABOUTREZK. In 1960 there was legislation recommended that would thwart meaningful integration by permitting public school-teachers to receive State retirement benefits even though they taught in private schools. It was an effort to encourage private schools rather than public schools at the time.

Would your statement be the same or different with respect to that kind of legislation? Did it move toward more integration?

Judge BELL. That was doubtless an effort to have some education for people in case the schools were shut down.

That was the same purpose of the law that Senator Kennedy asked about that would let you take a tax deduction on the State income tax law if you made a contribution.

Everybody was concerned about having some education. We were a part of the country that had no public education for many years after the Civil War. I think people wanted to have education, but they had this prejudice under which they did not want to integrate the schools. It was a tough time.

Senator ABOUTREZK. As I said at the outset of the questioning, and I have more to ask, what is really important is to try to determine what your posture would be at this point.

As you well know, Judge Bell, the Attorney General has a great deal of influence and power with regard to issues such as school desegregation and other ones that I hope to get into later. There are, I think, well over 100 desegregation cases right now that are part of the caseload of the Attorney General's office. The Supreme Court is going to be deciding new definitions, new meanings in the area of desegregation of the schools.

I wonder now, if I might, move from what is understood as your past involvement in desegregation or segregation to what it would be now.

I would like to ask what the position, the policy of the Justice Department will be under your leadership with regard to busing cases, for example—the ones that will most likely be determined by the Supreme Court and argued by the Justice Department.

Judge BELL. Well I don't know what busing cases they have there now, but my policy will be this. I know more about school desegregation cases than, perhaps, any person you could find. I had so many school cases going at one time in Mississippi—and I don't mean to make light of this—that the people referred to me as "the school superintendent of Mississippi." So I know a lot about this.

Bussing is a very complicated thing. Busing has been misused. That term has been badly used. We have desegregated hundreds of schools

districts simply by reconstituting the bus routes where they already had buses.

When you get into a large city, you have a wholly different problem. City school systems were built on the basis of neighborhood schools so that you did not have to have transportation. You could walk to school.

Now there have been a number of school districts in the fifth circuit—Jacksonville, Fla., is a good example—where they have had to buy large numbers of schoolbuses to bus children—that was a case of mine—so that they could desegregate the school system. Jacksonville is probably the largest school system where that has been done.

If we move into Chicago or other large cities in the country where they have huge school systems, then you have a big problem on how to do that.

I have always used—even in Jacksonville and Mobile, and there will be a lawyer here from Mobile who will represent the NAACP and tell you about that case, he will be testifying later—the theory of operation that nobody is able to go in there and lay down an edict and say “everybody is going to be moved around on this basis.”

The way to do it is to get a biracial committee, a community movement going, a community effort, and work out some kind of plan, including sharing control of the system between the blacks and the whites. You must start at the top—teachers, management—down. You can finally work out some satisfactory system and save public education.

Now we have done that in a lot of places. You can go into many sizable cities in the South where that has been done. I have been in a lot of those conferences where the judges were there and the lawyers were there. Ofttimes the lawyers were there from both sides. Maybe they had some clients with them.

Finally, when you talk and people communicate, then you will find a lot of these problems can be handled, but it is difficult to handle a large city school system in desegregation simply by entering an order and saying “this is the way it is going to be done.” It is complicated.

Senator ABOUREZK. I understand that it is complicated, Judge Bell.

In terms of trying to determine what your policies might be, though—

Judge BELL. My policies would be to carry out the law right from *Brown* up to date. I have carried it out many times. I would still carry it out. That would be a policy of the Justice Department. I intend to have a vigorous Civil Rights Division. I intend to have people there who will carry out the law. I have no hesitancy about that at all.

I think that we are going to have to move to one law for the entire country. Where there has been *de facto* segregation, as compared to *de jure* segregation in some places, we are going to have to look into that to see that the rights of every American citizen are vindicated. I plan to look into that.

Senator ABOUREZK. I agree that, you know, neighborhood schools are absolutely the best for children and for their parents. There is no question about that.

But what if a neighborhood school results, because of neighborhood residential patterns, in tremendous discrimination and you have exhausted all other remedies except busing, which perhaps is more

controversial than your nomination, what kind of a policy would you adopt at that point?

Judge BELL. You would bus. I would require busing. My opinions show that. That is a last resort, but when you come to that point, then you have to bus.

Senator ABOUREZK. My time is up.

Senator Riegle?

Excuse me, Senator Chafee?

Senator CHAFEE. Judge Bell, I would like to join in the welcome to you.

I would like to spend more time on the future than on the past, if we might.

How do you perceive the relationship between yourself, as Attorney General, and the Director of the FBI? Do you envision yourself keeping a tight reign on him and monitoring pretty carefully his activities? How do you envision it working out—regardless of who the Director of the FBI is?

Judge Bell. I perceive that the Federal Bureau of Investigation is a part of the Department, and as Attorney General they are under my jurisdiction. I intend to pay close attention to the FBI, as to other parts of the Department of Justice. I may even have an office in the FBI Building. If I want to and if I think that is a good thing to do, I may do that.

Certainly I will keep up with the FBI. That is not to disparage the FBI in any way. I have a high regard for the FBI, but we will want everything in the Justice Department to run right and to be operated on what I call "duly constituted authority." I would be the authority.

Senator CHAFEE. So it would be quite proper for the public and the U.S. Senate and Congress as a whole to hold you responsible for what takes place within the FBI?

Judge BELL. Yes; I realize it would be one of my responsibilities for which it would be proper to hold me accountable.

Senator CHAFEE. Next, I would like to go back a little bit, if I might, to your references on how you envision proceeding in the selection of the Federal judges, both circuit and district.

I would like to refer to a statement that apparently came from a paper President-elect Carter had and in which he says as follows:

All Federal judges and prosecutors should be appointed strictly on the basis of merit without any consideration of political aspect or influence. We can no longer afford to treat the administration of justice as political patronage. Even the ability to meet minimum standards is no longer enough. We must search out the very best.

Independent blue ribbon judicial selection committees should be established to give recommendations to the President of the most qualified persons available for positions when vacancies occur.

As I understood what you were saying this morning—and correct me if I am wrong—I understood you to say that as far as the circuit court judges go, you would envision a blue ribbon panel-type; whereas with the district judges, I got somewhat of a different impression as to how you would propose that would be done. That would be done, as I understood, by the Senators and some others. Is that correct?

Judge BELL. You are correct.

I possibly did not make clear that we hope that the Senators will set up blue ribbon commissions, but we are not in a position to make people unfriendly. The Senators may not want to do that. We are hoping they will do it. We will have a model for doing that. We certainly hope that all the Senators will do it, but Senators, of course, are a separate part of the Government. We cannot tell everybody what to do. We will try to persuade the Senators to do this. I think some of the Senators have already agreed to it, actually.

Senator CHAFEE. But the President makes the appointments?

Judge BELL. Yes; he makes the appointments, but the Senators, over the years, have gotten into the habit of making nominations to the President. If the President likes a person and thinks he is qualified, he sends the name back over to the Senate.

It would be a sharp departure from past practice for the President to set up blue ribbon commissions for district judges and circuit judges. So we are starting out with circuit judges, hoping that the Senators will follow the same system. Whether that works out or not, we will just have to see.

I think probably in time the Senators will all see the merit in doing that.

Senator CHAFEE. Is that a hope or a prediction?

Judge BELL. It is a hope and a mild prediction.

Senator CHAFEE. So, as I understand it, there will be a difference, as you envision it, in the appointment of the circuit judges and the circuit court judges will come through this blue ribbon commission, which will report to you, and you will then recommend to the President, as you envision it, on the circuit judges?

Judge BELL. Yes; that's the way it will happen.

We will continue to let the American Bar Association screen these people to get their views. I also expect to ask the National Bar Association, which is the bar association that has 7,000 black lawyers in it, to give me their views.

They would want to know whether or not there was any question of racism about any prospective man or woman who might be up for appointment.

That is something I plan to do as a new thing. I want to get all of the input I can.

Judges have a lifetime tenure, and it is very important that we be extremely careful about who we put on the bench.

Senator CHAFEE. But basically the new system applies to the circuit and it is "business as usual" in the district courts?

Judge BELL. I hope it will not be "business as usual."

I will be talking with the Senators, you know. Once somebody's name comes up, we will want to talk about that.

Senator CHAFEE. The next question refers to the Justice Department because in President-elect Carter's statement he said all Federal judges and prosecutors.

As I understood, this morning what you were saying was that regarding those who were incumbents and who sought retention at the conclusion of their term, you would have a screening board of some type for those.

Judge BELL. No; I did not mean to give that impression. I would be the screener.

Senator CHAFFEE. You will be the screener?

Judge BELL. The Senators who are interested in making a change or keeping the same person will be also screeners. We will talk about that. We will try to operate on the merit system.

There will not be any screening committee as such for the U.S. attorneys or the marshals.

Senator CHAFFEE. How about for new appointees? Would it be the same?

Judge BELL. The same, yes.

It is a big bite to start on commission selection systems for all these people at one time. If we start out on circuit judges and the Senators are persuaded that this would be a good way to handle district judges, doubtless, we will get to this on U.S. attorneys; but we will not do that immediately.

We will take care to see that we get good people on the merit system as U.S. attorneys.

Senator CHAFFEE. On the merit system, that includes this which was stated in this statement: "without any consideration of political aspect or influence"?

Judge BELL. Yes; no one will get a job on account of politics.

Senator CHAFFEE. It would help to know a Senator, I suppose?

Judge BELL. All things being equal, it would help to know a Senator.

Senator CHAFFEE. Through this fine screening process, do you think any Republicans will emerge in this administration?

Judge BELL. It's quite possible. I think I know a good lawyer when I see one. I hope we have good lawyers as U.S. attorneys.

I am serious about having professionalized U.S. attorneys offices.

It may well be that we will have some Republicans.

Senator CHAFFEE. Is that a prediction again or is it a hope? It's a hope on my part.

Judge BELL. A mild prediction.

Senator CHAFFEE. That's all the questions I have.

Senator ABOUREZK [acting chairman]. I suspect there ought to be the same number of Republicans serving as there were Democrats under the previous administration.

[Laughter.]

Judge BELL. It might be hard to find a Republican under that formula.

Senator ABOUREZK [acting chairman]. Senator Riegle?

Senator RIEGLE. Just at the outset, I have questions for the record that I would not like to take the time here now for you to respond to, but I would appreciate it if, before this comes to a vote, if you could respond to them. I have drafted them carefully. I am really interested in a careful response.

[The questions for the record referred to, and the answers subsequently filed, follow.]

QUESTIONS FOR JUDGE GRIFFIN BELL FROM SENATOR RIEGLE

1. Judge Bell, in the last Congress the Antitrust Division, in conjunction with White House staff, made a rather substantial effort to try to get enacted a repeal or drastic modification of the Robinson-Patman Act. Small business has strongly opposed such a move on the basis that it is this act that protects them from the fair and predatory competition. It is my understanding that President-elect

Carter, in a speech in Cleveland during the campaign, expressed strong support for the Robinson-Patman Act. If you are confirmed, I would hope that you would temper any attempt by your Assistant Attorney General in charge of the Antitrust Division in renewing this effort. Have you familiarized yourself with the Robinson-Patman Act and do you support its continued enforcement?

2. One of the great lessons we relearned when the Supreme Court ruled former President Nixon could not withhold the Watergate tapes was that ours is a nation of laws and not men and that everyone from the President on down has to obey the law.

I assume, Judge Bell, that you agree with this and that if a federal agency official is not adhering to the law, his conduct should be corrected so he carries out the laws and does not make his own. If that is so, don't you think it is unseemly for federal agencies to try to avoid having federal courts decide whether they are violating the law by raising technical legal defenses that prevent American citizens from stopping such illegalities?

One case I am thinking of involved a citizen's group and eleven members of Congress who went to court to stop the Executive Branch from giving away rights to government patents—paid for by the taxpayers—to private industry for nothing. The lower court ruled that the giveaway was unconstitutional, but the appeals court said that the plaintiffs had no "standing"—i.e., they had no right to stop the giveaway—and dismissed the case. (*Public Citizen v. Simpson*, 515 F.2d 1018 (D.C. Cir. 1975)).

Will you agree to take whatever steps are necessary to end this practice if you are the Nation's chief defense counsel?

RESPONSE BY JUDGE GRIFFIN B. BELL TO WRITTEN QUESTIONS SUBMITTED BY SENATOR RIEGLE

1. *Robinson-Patman Act*.—I am familiar with the Robinson-Patman Act and would vigorously continue to enforce it. I share Senator Riegle's concern about the need to protect small business from unfair and predatory competition. As Attorney General, I would foster a policy of strong enforcement of the antitrust laws to promote free competition.

2. *Standing to Sue*.—Certainly I agree with Senator Riegle that if a federal agency official is not adhering to the law, his or her conduct should be corrected. I believe that American citizens should have the means of seeking the redress of their grievances through the legal system. The process of establishing technical definitions of standing to sue should be left to the federal courts and to the Congress.

Senator RIEGLE. I appreciate your responses today and the fact that over a number of years you have had a clear involvement in a broad range of public questions and issues.

I served in the Congress, not here in the Senate but on the other side, for 10 years. I have served, among other things, under six different Attorneys General. If you are confirmed, you will be No. 7. I have seen two of the six convicted of crimes. One was for obstruction of justice, in the case of Mr. Mitchell, with which we are all familiar.

Having gone through that experience as not just a Member of Congress but the country, I think your appointment is the single most important one that President-elect Carter has had to make because of the pattern, recent history, being as bleak as it has been.

That imposes on you and him and those of us here a special obligation. I think, to inquire as fully as we can and to really make sure all the cards are on the table.

It seems to me that the job performance of the next Attorney General of this country, especially now given the fact that we have had a change in administrations and so that past period is, hopefully, forever behind us—the record that you would make, if confirmed, I think, comes at an especially crucial time in the history of this country.

I think the seriousness of the questions and the inquiring groups, the issues that they have raised, are against that backdrop of recent history.

So there are some things that I really want to pin down in my own mind.

I want to understand as well as I can what your own personal relationship is with Mr. Carter. I don't just mean with respect to your political involvement.

As I understand it, you did some work on position papers and you contributed \$1,000 and you invited other people to contribute some months ago.

On the personal side, how long have you known Mr. Carter?

Judge BELL. I do not know for sure. I have known him since he was a child. We grew up 8 or 9 miles apart.

His first cousin is a journalist. His name is Don Carter. He and I are the same age. We went to college together. We knew each other as young boys. We went into the Army together.

I have always known the Carters and I guess they have always known my family.

I remember Governor Carter as a child. He is 6 years younger than I am. I cannot say for sure how long. I have known him a long time.

Senator RIEGLE. As an adult, how much occasion have you had to spend time together?

Judge BELL. Not a great deal—just to see him from time to time, maybe twice a year.

I think I had lunch with him twice while he was Governor.

My home is two blocks from the Governor's mansion. I never had a visit in the Governor's mansion while he was Governor.

I don't mean to indicate in any way that we are not friends. You don't have to see someone every day to be friends.

Senator RIEGLE. But would it be fair to say then that it has not been an extremely close personal relationship where there has been frequent contact and where you would have dinner together or you would counsel on the telephone on a regular basis?

I am thinking now back over the last 10 or 15 years.

Judge BELL. No. There has not been a regular relationship.

I think it would be fair to say, though, that one of my law partners, until yesterday, is his lawyer. He does see him and counsel with him on a regular basis.

As I say, I see him from time to time. I think we are friends.

Senator RIEGLE. You see, to many people that is sort of a troubling aspect. One can argue whether it should or should not be, but there are a lot of folks in the country and a lot of people qualified to be Attorney General—

Judge BELL. We had a hard time finding them.

I was not seeking this job. We were looking for someone. The President finally chose me.

I know it troubles people. It troubled me. I almost did not take the position because of that.

I told the press, and I guess the only answer is that it gets down to my integrity and his integrity.

Senator RIEGLE. I am not sure that is the issue because I do not know to what extent that has been put in question. I think there are a lot of other things.

Judge BELL. That is the only safeguard in the end.

Senator RIEGLE. I think there is also, however, without raising the issue of integrity, the issue of independence, the issue of separation, and the degree to which there is cronyism involved here or anything that smacks of it.

A close friend and law partner of yours is the President's very close personal friend.

I think the legitimate concern that a lot of people have is will there be sufficient independence in the Justice Department different and very much separate and apart from what we saw in the previous administration where there was a tremendous abuse of power.

One of the safeguards is the degree to which there is bona fide independence established here.

That is why I really want to pin down what the nature of the relationship is, so that nobody labors under a misconception.

Another thing that adds to the troubling aspect of it is that, as I watched the process of selecting the Cabinet, virtually every prospective Cabinet member was sort of trial ballooned in the press ahead of time, so that whatever static might be there had the chance to take place in advance of the time that the President-elect actually announced his final decision.

It seemed quite pointed to me that was not done in the case of the Attorney General, and for reasons that are not particularly clear to me.

There were rumors and speculation—one never knows quite where it comes from—that certain people were being considered. Then the announcement that you had been selected came quite suddenly and without the same kind of advance trial ballooning that had taken place with others.

Again there may be a very logical explanation for this, but what I think it does, being out of the pattern of the way the rest were handled, it puts an additional burden on you and on the President-elect and I think, in turn, on us to try to establish why it was that a different procedure was used here.

I think the thing that I am the most sensitive to, and I have gone through a number of opinions that you have rendered in the past and so forth, and one can argue pro and con on certain of those, but it is this question of where your allegiances lie and whether or not, as the chief law enforcement officer for this country—the point at which you are the President's lawyer versus the country's lawyer.

Perhaps it would not be quite such a pointed question if we had not had the painful experiences we have just had where there was a requirement for prosecution within the executive branch of Government and the whole system of justice was subverted at that point.

I think what we are all looking for are iron guarantees that there is such a strong degree of separation and independence here that that question could not conceivably arise should you be confirmed.

That is the concern that I feel.

Anything that you want to say along that line that could help rest that concern in me and in others, I would like to hear.

Judge BELL. As to floating names, you say you never saw my name floated. My name was floated before the election.

The first name I ever saw mentioned for Attorney General was about a week before the election in U.S. News and World Report, and I was very surprised to read my name.

Nobody had ever mentioned it to me. Nobody had ever mentioned to me at any time, including my law partner, any idea of my being the Attorney General.

If I had known I was going back into Government, I would have asked for a job. I would have asked to be Solicitor General because the Solicitor General is a real lawyer's dream. You can argue cases. That is what I would rather do.

But to answer your question about the relationship and friendship and that sort of thing, let me say this: I think finally you have to depend on me. You have to depend on Governor Carter. You have to depend on me.

That is why I think it is a good thing that someone is appointed with a record.

When I went on the fifth circuit, within less than a year, as I remember, I ruled against Governor Vandiver in probably the biggest case that changed the whole political system in Georgia. That was the county unit case. It changed the whole political status in Georgia.

I was ready to rule against my friend Governor Vandiver. That was the law.

The Attorney General is under oath and he is like a judge under oath.

Somebody once said to me, after I ruled against a lot of school districts around where I grew up, that they thought I would rule against my mother. That was not too complimentary to me, but maybe it is a compliment under the view you are taking.

Finally, I think the Government won't function and won't work unless you have good people.

If I am a good person, if I am to be believed, if my record demonstrates integrity, then I ought to be confirmed. If not, I ought not to be confirmed. That is the only way the Government functions.

You cannot tie everybody up by a law.

If you put honest people in jobs, you will get honest service.

Senator RIEGLE. Let me just say in response to that this—

Judge BELL. I don't mean to be antagonistic.

Senator RIEGLE. I understand. Nor do I.

Judge BELL. I know it is a serious question.

Senator RIEGLE. There has been a lot of talk and a lot of move to establish an office of an independent special prosecutor so we do not run into this problem of friendships of political allegiances or anything of this sort, of the appearance of that.

To me, the appearance of it or the unresolved question starts to border on an actual breakdown in the system itself.

Would you favor establishing a special prosecutor that would have the authority to move into cases possibly where there is suspicion of some violation of the law within the executive branch?

Judge BELL. I attempted to answer that a bit ago. Maybe you were not here.

I favor a special prosecutor, but I would like to have one which was not permanent. There would be a triggering device where somebody else pulls the trigger and establishes the special prosecutor. I think we have a need for that.

Senator RIEGLE. You would support that?

Judge BELL. Right.

Senator RIEGLE. But you are not saying that you would do it on a case-by-case basis or are you saying that?

Judge BELL. Yes; I am saying that.

Senator RIEGLE. The problem with that is that the inertia is such that it is very hard to trigger the mechanism.

That is why those of us who feel the other way feel you ought to have somebody standing so that you do not have to undergo the rigor of getting the process started.

Judge BELL. I might come to that view, but I am opposed to creating another office just to have an office or a bureaucracy, just an extra bureau, where there is nothing for that group to do.

If it turns out that there appears to be a good deal for them to do, I would agree to that; but right now I think that an independent triggering group or mechanism whereby some outsiders or judges, let's say, appoint the prosecutor would safeguard the public interest.

I am not saying that I would not change. I am a person who studies. If there is a good case made to change, then I have changed a lot of times on things.

Senator RIEGLE. I appreciate that.

Let me cover two more things quickly in the time I have.

I happen not to be an attorney myself. It is only by the luck of the draw that I was assigned to the Judiciary Committee and only on a temporary basis, but I can understand why lawyers are here when I was trying to make the differentiation between the two words you used earlier: "endorsement" and "recommendation."

They are somewhat synonymous in my mind, so I got the dictionary out and I saw that to endorse is to approve or sanction and to recommend is a representation in favor of a person or thing to induce acceptance or favor.

They sound awfully similar to me.

I gather the distinction you are making is that you were in effect saying that you would not have advanced that nominee on your own initiative, but once he had been advanced, you were prepared to offer recommendation in his behalf. Is that correct?

Judge BELL. That is correct.

Senator RIEGLE. I also gather from what you said before that with the addition of hindsight, knowing what you know now, you probably would not make that recommendation. Is that a fair statement or not?

Judge BELL. As I said this morning, this is the hardest question you could ask me.

Senator RIEGLE. I understand.

Judge BELL. You are the third Senator who has asked me.

Senator RIEGLE. It may not be the last.

Judge BELL. I doubt if it will, but I will keep trying to answer it as best I can.

I did not nominate Judge Carswell. I recommended him after he had been nominated.

If I knew all I know now, I would have to reconsider it.

I do not want to say anything, though, that would in any way be hypothetical and harm someone 7 years later.

I am in a tough spot on this.

Senator RIEGLE. Yes; but you are in a tough spot in another way, too.

I understand you are on the personal level, and I can appreciate that. The other side of this is that you made a representation very strongly at that time that in light of what we know since says something about your own judgment that may not be an accurate reflection of your judgment today.

I really think you ought to think about whether you want to make a clearer answer than that while you can.

Judge BELL. I have decided that I am not going to repudiate Judge Carswell in the sense of what happened then. I don't think it would serve any useful purpose for me to do that.

I said what I said then—that he would bring something to the Supreme Court that was needed, 11 years as a trial judge and 5 years as a U.S. attorney. That was the thing that I thought of that would justify his being put on the Supreme Court.

I did not know all of the things then that have happened since. If I had known those, I would have to sit down and make a judgment.

Senator ABOUTREZK [acting chairman]. Senator Rieggle, your time is up.

Senator Sasser?

Senator SASSER. First of all, Judge Bell, I want to congratulate you for being the Attorney General-designate.

I note with great interest that you hold an honorary membership in the Order of the Coif from my old law school, Vanderbilt Law School.

Frankly, I think today that the questions which have been asked of you are legitimate. I think that they are worthy.

I am sorry to say that we have seen too many times the Office of the Attorney General of the United States being used for purely political purposes.

In response to that, I think that the members of this committee are today going to great lengths to establish that in the next administration the Attorney General is something better and something greater than we have seen in the past few years.

I think we are looking for an Attorney General who will work tirelessly to rectify the wrongs and to attain justice for every citizen of this land.

I think, sir, that I would be less than candid if I didn't say to you that, as a southerner, you will have the added burden of showing that we, too, are fair and that we, too, believe in the Bill of Rights and the constitutional protections which are guaranteed to all Americans.

I am confident and I hope deeply that if you are confirmed—and I hope that you will be—that you will be able to establish a distinguished record in the Justice Department for fairness to all Americans, for judicial reform, and for running an open administration.

Now, having said that, there are a few questions that I would like to ask you, Judge Bell.

My first question concerns the proposal to establish a commission to screen appellate judges and to recommend appellate judges to the President. Perhaps you have not had time to think this through clearly, but I am interested in knowing how this commission would be constituted and what sort of groups would be represented on the commission.

Judge BELL. I have actually had that drawn as an Executive order constituting such commissions. There would be no more than 11 members on any single commission. There would be one for each circuit, and in two circuits there would be two because they are so large.

There would be one representative from each State. The extra members would be used to get a cross-section representation. They would be blacks, women, and so on, so that in the end every person would have an opportunity to be fairly considered.

That is the way they would be set up.

This would be the first time, I suppose, that there would be an orderly way to choose somebody who wants to be a Federal circuit judge. He can apply and have his name submitted.

I think the way that Governor Carter will pick the names will give confidence to the entire public.

In that connection, I am aware that, as a southerner, there is an added burden on me to do things not only in a fair way, but in a way that they appear to be fair. I am aware of that. It is a heavy burden.

I intend to live with it.

Senator SASSER. I applaud your plan to broaden this commission beyond just lawyers.

Judge BELL. It will probably be half laymen.

The one we had in Georgia, that Governor Carter had there, was half laymen. I believe the chairman may have been a lawyer.

Let's use the figure of 11. There could be five lawyers and five laymen. The chairman could be a lawyer or a layman.

Everywhere that the laymen have been used in these commissions in the States, and it has been tried in several States, it has turned out to be a very good thing.

That is the reason it is probably a good thing that Senator Riegle and Senator Heinz are on this committee; that is, to bring some laymen viewpoints to the affairs that you are judging.

Senator SASSER. I do not mean to diminish the role of lawyers in having a say-so as to who our Federal judges should be, but I do think that your plan of broadening the composition of the commission is a good one.

I have sometimes thought, during my 15 years in the active practice of law, that we lawyers come to the view that we own the courthouses, that we have an interest in the judges, and that no one else should participate in their selection.

I think the concept and the plan of having a broad-base commission to have some input in the selection process is a good one.

I have another question, Judge Bell.

We have heard over the past few years sporadic accusations that grand juries and occasionally U.S. attorneys have sought indictments

for purely political reasons. I am particularly sensitive to that inasmuch as we have had those accusations made in the State of Tennessee.

I wonder what plans you might have formulated to see that those accusations could not be made under the new administration.

Judge BELL. We are going to have very tight control in the Justice Department over the U.S. attorneys' offices.

If we find that anyone is being charged, investigated, or prosecuted for political reasons, we will take immediate action. Whoever is responsible for it will be discharged forthwith. We will not suffer any such thing as that. That poisons the system of justice. That poisons the stream of justice. We could not have that.

Senator SASSER. I would like to pursue just a little further the question of the Sibley Commission.

Some of your detractors indicate that this commission might have been used as an instrument to encourage resistance to desegregation.

On the other hand, some of your proponents indicate that the commission was used to try to plow the ground ahead for desegregation.

I wish that you would tell this committee today precisely what the Sibley Commission was and what its duty was.

Judge BELL. The Sibley Commission was designed for the purpose of having the people speak to their elected representatives.

The legislature wanted to close the schools. The Governor had said he would do it.

I thought if the people somehow could make their voices heard, then we could save the schools.

Mr. Sibley had these hearings in 10 districts, all of the congressional districts. We had 1,800 witnesses representing some 250,000 people. A lot of them represented organizations.

It became clear from the hearings that the people wanted to save the public schools. That message got over, I think, to the representatives. By the next session of the legislature, which was in early 1961, the laws were changed to the extent that we could have an orderly desegregation system.

That was a strange way to go about things, but when you have great social changes, you have to persuade people to do it.

Congress had never acted. It was only the Supreme Court that had said this. When Congress finally got around to acting on the public accommodations, the people immediately agreed to do that. There was never any hesitancy. You have got to have in mind that Congress had never acted all this time.

We were there trying to persuade the people to change the customs of centuries. They were able to do it. However recalcitrant it may have seemed, that is the way it happened.

In Georgia we think of it as historical.

But I realize that there are a lot of other States in the Union and that the country is vast. That is the way we view it there in Georgia.

Senator SASSER. I have one final question.

This is a matter, I think, which is of great concern to many of us. The matter is what some of us see as a continuing erosion of civil liberties of Americans in this country and a continuing intrusion of Government into the private affairs of citizens of this country.

I read with some chagrin a few months ago a Supreme Court decision which allowed the Federal Government to subpoena bank records.

of individuals without that particular individual having knowledge of the fact that the Government had subpoenaed these records.

As I recall the holding, it was that the Federal Government could do this on the ground that the bank actually owned the records and that the individual citizen, or the depositor in the bank, had no control over the records.

I wonder how you would view this delicate balance between the needs of the Government on occasion to get to these records in criminal prosecutions and the civil rights of the individual involved?

I realize that is a very complex question.

Judge BELL. That's a fourth amendment right involved. The rationale of the Supreme Court decision is that you have no expectation of privacy in someone else's records, the bank's.

That has been changed to some extent in the tax act that was just passed in the last session of Congress.

They added 35,000 pieces, estimated, to the Federal courts because now when you subpoena the bank records, you have to give the taxpayer notice that you have done so. The district courts have been given jurisdiction over the protests by the taxpayers.

So this is going to add a lot of work at the Justice Department and also a lot in the Federal courts.

But I am sure the legislation is the result of the great concern now being felt about the Government intruding into everyone's affairs.

When I was a young lawyer, the Government looked at bank records as a matter of course without even issuing a subpoena. Issuing the subpoena was an improvement. Still it is a problem.

Under this new statute, I suppose it is not a problem any longer.

There are a lot of people who think that statute should be changed because the impact on the court system is going to be so great.

That is something that the Senate will be concerned with.

But right now, for the first time, you can get a hearing in the Federal court.

Senator SASSER. I take it, Judge Bell, that you have no objection to increasing the workload on the Justice Department if this were necessary to safeguard the right of privacy of American citizens and to safeguard the civil liberties of all American citizens.

Judge BELL. I have no objection to doing that, but I want to look at it to see if we can cut down on the number of cases. If there is some other way it can be done without adding 35,000 cases to the district courts, that would be better. That is a huge increase.

There may be some way that we can accomplish the same thing without having that many lawsuits. I do not know how to do that now, but I will look into it.

I know it is a problem.

There are a lot of other areas where the Government intrudes, as you know.

Those of us who believe strongly in the Bill of Rights resent Government intrusion.

I would be on the side of those who would be trying to maintain our rights of privacy and all of our rights under the Bill of Rights.

That would be something that you Senators would be addressing yourselves to.

I have often thought that maybe the Federal courts were the last bastion of hope in this area. Of course the courts cannot do everything. People will usually follow statutes once they are enacted and the people become educated to them.

So maybe we can do something through the statutory law.

Senator SASSER. Thank you.

I have no further questions, Mr. Chairman.

Chairman EASTLAND. Senator, Thank you.

Senator DeConcini?

Senator DeCONCINI. Mr. Chairman, members of the Judiciary Committee, thank you for letting me impose and ask just a few short questions.

Judge Bell, I am Senator DeConcini from Arizona.

I am very concerned with the problems of organized crime not only throughout our State, but throughout the country.

I wonder if you would tell the committee and share with us a few of your concepts as to what you would do in the Justice Department to increase the effort of the task forces on organized crime within that office?

Judge BELL. That was the basis of my statement earlier in the day that I was planning on reorganizing the Justice Department to put the deputy in charge of all crime areas in the Department having to do with crime.

We want to give much more emphasis to the fight against organized crime, price fixing, and many other things which are more complex.

We are going to have to regear the Justice Department in that area. We are going to have to improve the prosecutorial forces. We are probably going to have to get more accountants available who understand how to prosecute that sort of case.

But once we get somebody in as deputy, given my attitude, then we will have the staff on that and you will see some improvement.

I once saw a case where a man was prosecuted three or four times in the Federal court and never served a day in prison. It was a white collar crime.

When he finally got into a State court, where they had strong prosecutors and people who understood accounting, he was convicted and sent to the penitentiary.

Senator DeCONCINI. Judge Bell, do you subscribe to the concept of having prosecutors direct investigations in organized crime or organized narcotics? Do you believe there is a valid role for the prosecutor? In your case it would be the district attorneys to be involved in the actual investigation of the criminal elements and activities.

Judge BELL. I think so.

What happens now is that the investigative forces make the case and take it in to them. I don't think you have anybody giving overall direction to large criminal activities. I think the prosecutor and the district attorney in the case of the Federal cases have to give some consideration to it.

That is how the strike forces may have started. Nobody was giving direction to this sort of thing.

Senator DeCONCINI. So you are inclined to subscribe to the strike force concept with the prosecutors directing the investigation: is that correct?

Judge BELL. In some cases I would use strike forces. I would not have a strike force out looking for business and have a parallel U.S. attorney's office set up in a place.

That is the trouble about the special prosecutor. The special prosecutor would be out looking for business.

You send a strike force to do something. You keep up with them. When they finish, you move them somewhere else.

That would be my concept. That may be rudimentary because, after all, I have not been into this area of the Justice Department. That is just what I think should be done.

Senator DeCONCINI. Does the same apply towards organized narcotics? Do you feel that a greater effort can be made in that area in the Justice Department with coordinating efforts of various Federal agencies?

Judge BELL. I think so.

I don't want by my answers to upset the whole Senate or the Congress. Somebody might think I have radical views. I am going to look into the matter of putting the Drug Enforcement Agency into the Justice Department where you will have a coordinated investigative effort in all of these matters.

Maybe I am wrong about that, but at least I am going to look into it.

Senator DeCONCINI. I think you are right.

Thank you very much.

I would like to ask one more question, Mr. Chairman.

Judge Bell, are you familiar with adult diversion in the criminal justice system diverting first time offenders out of the prosecutorial system through the prosecutorial discretion similar to what is known sometimes as the Brooklyn plan? If they subscribe to certain procedures, then the prosecution is dropped?

Judge BELL. I am not generally familiar with that. I am familiar with the concept of first offender statutes.

We had one of the first in America in Georgia. It was the recommendation of the crime commission that I headed. It was a great, great breakthrough to take young offenders and remove their conviction completely from the record after a certain period of time.

That would be the same thing.

Senator DeCONCINI. You are not opposed to considering a diversion project within the district attorneys' offices?

Judge BELL. No, I am not opposed to it.

Senator DeCONCINI. Thank you, Mr. Chairman.

Chairman EASTLAND. Gentlemen, everybody has now had one time to question.

Mr. Stanley, president of the American Bar Association, has to leave town this afternoon. I would take him next.

Senator ABOUREZK. Mr. Chairman, Judge Bell will be back, won't he?

Chairman EASTLAND. Certainly. He is not going to leave the room.

Mr. Stanley?

Proceed, Mr. Stanley, and identify the gentlemen with you.

TESTIMONY OF JUSTIN A. STANLEY, PRESIDENT, AMERICAN BAR ASSOCIATION

Mr. STANLEY. On my left is Mr. Early, who is the executive director of the American Bar Association. On my right is Mr. Evans from our Washington office.

Mr. Chairman, I am most grateful to you for permitting me to speak at this time. I am under some time pressures. I am grateful to you.

I am Justin A. Stanley, the current president of the American Bar Association and I am a practicing lawyer in Chicago.

I am pleased to have the opportunity to appear before you today to testify with respect to the nomination of Griffin Bell to be Attorney General of the United States.

My appearance here today has been authorized by the unanimous action of our board of governors.

You have, of course, received full reports about Judge Bell's service on the Fifth Circuit bench and about his governmental administrative activities in Georgia.

I have said here that these activities were administrative. In light of the testimony that he has given, it seems to me that they should be described as legal rather than administrative.

It occurred to me, therefore, that I might be most helpful to you if I describe some of the relationships which Judge Bell has had with our association and then add my own appraisal of the man.

A list of his ABA activities is appended to my prepared comments. The first significant contact we had with Judge Bell came in 1961 at the time President Kennedy was considering him for appointment to the Court of Appeals for the Fifth Circuit.

As you know, our Federal judiciary committee, at the request of the Department of Justice, reviews possible nominees for the Federal bench and gives its report to the Department.

When a nomination is, in fact, made by the President, your committee has, for the past 25 years, requested our association's opinions as to the professional qualifications of the nominee.

This procedure was followed in the case of Judge Bell.

Bernard Segal was at that time chairman of the committee and Leon Jaworski was the committee member from the fifth circuit.

Although Judge Bell had been in practice only 14 years, he received a well-qualified rating, the second highest rating which the committee gives and one which is seldom given to a person with less than 15 years of practice.

In 1968, Judge Bell became active in our judicial administration division, the group composed largely, but not entirely, of judges which works on means of improving the administration of justice within the judicial system.

Since then, and despite the heavy burdens of his judicial duties, he has given generously of his time to work designed to improve our justice system.

Judge Bell's first service in the judicial administration division was as a member of the committee on expert testimony.

In 1970, Judge Bell began work on our Commission on Standards of Judicial Administration, the civil counterpart of our standards of criminal justice.

That commission undertook a revision of earlier standards and has recently published new standards relating to trial courts and relating to court organization.

It has also published a tentative draft of standards relating to appellate courts.

These standards have had, and I hope will continue to have, a profound and beneficial impact on the operation of courts and the improvement of the administration of justice throughout the Nation.

Judge Bell is one of only five commission members who has served on it since its inception. His contribution to its work has been of a uniformly high quality.

Judge Bell was chosen by the judicial administration division to serve as its chairman in 1975-76. He was an effective, highly respected leader.

In April 1976, the ABA cosponsored, with the Judicial Conference of the United States and the Conference of Chief Justices, a national conference on the causes of popular dissatisfaction with the administration of justice.

We often refer to this conference as "Pound Revisited," or the Pound Conference, because it was held on the 70th anniversary of Dean Pound's remarkable paper on the same subject delivered in St. Paul, where we met.

The conference, which was certainly inspired and led by the Chief Justice of the United States, brought together judges, academics, laymen, and practicing lawyers to put probing questions about how our system of justice could be made to work in order effectively to serve our Nation today and tomorrow.

Judge Bell was a significant participant in that national conference, particularly in the discussion of what types of disputes might better be resolved outside the existing judicial structure.

The Pound Conference highlighted many problems, but it was clear that further work should be done on how to develop recommendations for their effective solutions and for the implementation of the solutions.

The ABA undertook this job and placed it in the hands of a seven-member task force, of which Judge Bell served as chairman.

Within a period of 3 months, that task force prepared thoughtful, concise recommendations for future action which are set out in a little pamphlet entitled "Report of Pound Conference Followup Task Force."

I would be pleased to make copies of that report available to the committee.

Out of our working association with Judge Bell, we see a man emerge who is continuing to grow in stature and who has demonstrated an awareness of, and a need to provide for, changes in our system of justice while retaining, of course, our fundamental constitutional guarantees.

I have on several occasions explored personally with Judge Bell the need for, and the objectives of, these changes, and I am impressed with him. He is, to my mind, a person of outstanding capacity, of unquestioned integrity, and of complete fairness.

Judge Bell is progressive and openminded. He is tolerant of the views of others. He works well with people; he listens; and he gets things done.

Perhaps a quotation from the introduction to the report of the Pound task force would be appropriate.

Griffin Bell's task force there said:

It is important to keep firmly in mind that neither efficiency for the sake of efficiency nor speed of adjudication for its own sake are the ends which underlie our concern with the administration of justice in this country. The ultimate goal is to make it possible for our system to provide justice for all. Constitutional guarantees of human rights ring hollow if there is no forum available in fact for their vindication. Statutory rights become empty promises if adjudication is too long delayed to make them meaningful or the value of a claim is consumed by the expense of asserting it. Only if our courts are functioning smoothly can equal justice become a reality for all.

The ultimate goal, it is worth reiterating, is the fullest measure of justice for all.

I have great faith in Griffin Bell. I think our country would be well served if he were to become our Attorney General.

Thank you, Mr. Chairman.

Chairman EASTLAND. The summary of Griffin Bell's participation in the American Bar Association, which you have submitted, will be made a part of the record.

[The summary referred to follows.]

GRIFFIN B. BELL, SUMMARY OF PARTICIPATION IN AMERICAN BAR ASSOCIATION

1949: Joined the American Bar Association.

1968-70 (1 year): Member, Committee on Expert Testimony (Judicial Administration Division).

1969-74 (5 years): Member, Executive Committee on Appellate Judges' Conference (Judicial Administration Division).

1970-77 (7 years): Member, Commission on Standards of Judicial Administration.

1971-76 (5 years): Member, Project Advisory Committee on Administration of Appellate Courts (American Bar Foundation).

1972-74 (2 years): Member, Special Committee on Jurisdiction of State-Federal Courts (Judicial Administration Division).

1973-75 (2 years): Member, Committee on Advocacy (Judicial Administration Division).

1974-75 (1 year): Vice-Chairman, Appellate Judges' Conference (Judicial Administration Division).

1974-75 (1 year): Chairman-Elect, Judicial Administration Division.

1975-76 (1 year): Chairman, Judicial Administration Division.

1976-77 (1 year): Judicial Administration Division Delegate to the House of Delegates.

1976-: Chairman, Advisory/Liaison Committee (Judicial Administration Division).

April, 1976: Commentator, National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice.

1976-77 (1 year): Chairman, Task Force on Pound Conference Follow-Up.

Chairman EASTLAND. Any questions?

Senator BAYH. Mr. Chairman, let me say this:

Having not always agreed with the conclusions reached by the bay, I am impressed with the thoroughness of the experience that you have with the nominee. This is not an 11th hour effort to find out his qualifications, but it is based on a long-term experience.

Mr. President. I might say that my long-term experience working with the bar in legislative areas in which you have been one of the early-day continued supporters of the direct election of the President,

a matter in which I have some significant interest, has led me to believe that when you go at things thoroughly, it is done right.

Mr. STANLEY. Thank you.

Senator HEINZ. Mr. Stanley, I thank you for your testimony.

Might I ask if you have had a chance to examine Judge Bell's statement regarding the handling of his conflicts of interest?

Mr. STANLEY. I have not.

Senator HEINZ. I think it might be helpful to the hearing record if you could examine that and tell us if it meets the test of the American Bar Association, the minimum test, which I would assume would be quite high, minimum test of avoiding conflict of interest for the position of Attorney General of the United States of America.

Mr. STANLEY. I would be happy to examine it and communicate with the committee.

Senator HEINZ. I appreciate that. Thank you.

[The following letter was subsequently received by the committee.]

AMERICAN BAR ASSOCIATION,
Chicago, Ill., January 17, 1977.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary, U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: Thank you for providing me with the opportunity to testify before the Judiciary Committee last week during your consideration of Griffin B. Bell to become Attorney General of the United States.

At the conclusion of my testimony, Senator Heinz asked me whether Judge Bell's statement to the Judiciary Committee on conflicts of interest was consistent with the ethical guidelines of the American Bar Association. I informed Senator Heinz that I had not seen Judge Bell's statement, but that I would review it and respond to the Committee in writing.

I have consulted with Lewis H. Van Dusen, Jr., Chairman of the Association's Standing Committee on Ethics and Professional Responsibility, and with William B. Spann, Jr., President-Elect of the Association and past chairman of the Special Committee to Study Federal Law Enforcement Agencies (FLEA). The Committee on Ethics and Professional Responsibility is the body within the ABA that reviews ethical questions relating to our Code of Professional Responsibility. The FLEA Committee was constituted to study the question of partisan political influence on the Department of Justice and the Internal Revenue Service of the Department of the Treasury.

Mr. Van Dusen believes that Judge Bell's statement is consistent with the provisions of our Code of Professional Responsibility which caution attorneys against conflicts of interest. Mr. Spann advises me that the FLEA Committee only tangentially addressed the question of conflicts of interest. To the extent that he did, he believes that Judge Bell's statement is consistent with the findings and recommendations of the FLEA Committee. I concur in the conclusions of Mr. Van Dusen and Mr. Spann.

If I may be of any other assistance in your deliberations, please do not hesitate to contact me.

Cordially,

JUSTIN A. STANLEY.

Chairman EASTLAND. Any further questions?

You have made a very fine witness.

Judge Bell.

TESTIMONY OF GRIFFIN B. BELL—Resumed

Chairman EASTLAND. Senator Mathias.

Senator MATHIAS. Thank you, Mr. Chairman.

When the clock cut me off on the first round this morning, we were talking about Judge Carswell. We have had some more conversation

about him. I think maybe, as far as I am concerned, we can put him aside.

I think that the distinction between "endorsement" and "recommendation" will be merged in the future.

I assume the Attorney General recommends to the President the nomination of a judge or a justice, but he has to endorse him when the name comes down here.

Judge BELL. Senator, I expect, had I had a dictionary with me in Plains, Ga., when I was asked that question, I may not have gotten into debate about the difference between the two terms. I agree with you.

Senator MATHIAS. The case really comes down to our concern over the quality of judges.

I was distressed, as Senator Bayh has said he was, over that very unhappy episode. It has since become more tragic from my personal point of view than it was at that point.

It does seem to me that a screening process—and you have said that you will be the "screener"—it seems to me that a screening process ought to hold up the submission of names such as the case of Judge Carswell, who, even among his peers, upon close examination did not measure up.

After you had excised all the civil rights cases—and given the climate of the time, given the geography, given all the circumstances, you might have expected that his reversal rate on civil rights cases would be higher than normal with a district judge across the country—but after you had excised all those cases from his record, he still had a reversal record more than twice as many reversals as the average district judge.

That is an unhappy episode that I think we would all be glad to close.

Now Senator Bayh also said that we look back to the past only to gain some guidance for the future.

Governor Vandiver's administration was almost 20 years ago. That is a long time ago.

I think what is important to the committee is perhaps not so much what happened then as how you view it now.

I know it is difficult for you to reconstruct all of this in your mind. As I recall your testimony this morning, you said that Governor Vandiver was your friend and that you acted as a lawyer, not as a public official and not in a policy role.

You said that you had advised the Governor the schools would have to be desegregated and that you felt that you were a force for moderation.

I am wondering if it would be possible to reconstruct that period a little more accurately.

Do you have access to any documents that bear on your record during the Vandiver years regarding the problems of segregation?

Judge BELL. We have copies of the bills, all the bills.

We have some correspondence, but we do not have a complete file. I have gone back to see what I can find. What I have found does not help me a whole lot. It would not help anybody else because it is not complete.

We have thought of going to the Archives, to see what we could locate, but we never did.

All of the bills are there.

We have been to the Atlanta newspapers and examined the microfilm trying to find things. We did find a good bit that way.

Someone has looked through the Southern School News and found some things there about all these things, statements people made and whatnot.

What I said this morning is about all that happened. There is no statement, any one that we ever found, that I ever made. I would have been surprised had I found a statement because I was not a—it would have been unusual for a lawyer to speak when there were political leaders.

I don't know that I can add a whole lot to that.

I performed the role that I was asked to perform as a lawyer. I think we did a good thing in the sense that we kept the schools open.

The only thing that could have been done better than we did it was that if we had immediately changed the laws as soon as the *Cooper v. Arendts* came out and said, "We will now desegregate on a local option basis." It was 2 years before that was done, but, nevertheless, that is better than a lot of places were able to do it.

We thought we did pretty well, but maybe we did not.

Senator MATHIAS. Were you ever called upon or did you ever give the Governor any advice or suggest any ideas to him as to how he might prevent or delay or minimize the integration of the schools?

Judge BELL. I told him that we ought to change the law from what we had where we had to shut down the whole district in the event that one school was desegregated to go to the Virginia system of closing only the school that was desegregated.

That would minimize it and save the public schools. I did that; yes.

I do not remember doing anything about the pupil placement.

Every State had some kind of a pupil placement. We may have already have had one in Georgia at that time.

Going from the district to one school, I know I did that. And we had the Sibley Commission, too. That is two things I did for sure.

Senator MATHIAS. Those are the only two things you can think of which you think would fall into the category of assisting the Governor's efforts to prevent or delay or minimize integration?

Judge BELL. That is the only thing I think of that I did. There were a lot of things done and a lot of other people working on this besides me.

If I served any useful role, it was the fact that the Governor had some confidence in me as a lawyer, and I think he realized that he had to change his own position. I think I may have had something to do with that. He was a lawyer, too. I just knew that we had to change.

I do not claim I was the only person in Georgia who knew that. There was a great force of people. There were none situated where I was situated. They believed what I believed. They all wanted to save the school system. They were prepared to desegregate the schools.

Senator MATHIAS. Did you ever have occasion to publicly disagree with the Governor on any of these questions?

Judge BELL. I don't remember it. I don't think I did. I would not have anyway as a lawyer. I would not have gotten into the contest like that.

Senator MATHIAS. Governor Vandiver was obviously a great admirer of yours in those days and still is.

Judge BELL. I hope so.

Senator MATHIAS. Gene Goldenberg, who is a staff writer for the Scripps-Howard papers, talked to him back in December and filed a story on the 22d in which he quoted the Governor as saying:

Griffin Bell was one of the finest people I have ever known and probably the best lawyer I have known.

He went on to say that,

Bell transformed the traditionally honorary post of chief of staff into an activist post.

Would you think that was a characterization of that job as you remember it?

Judge BELL. I do not know what the political system is like in most States, but in Georgia, like Kentucky, they have what they call Georgia colonels, lieutenant colonels, on the Governor's staff. They send you a certificate you can put on your wall. The chief of staff is the head lieutenant colonel. As such, you are a full colonel. I was and I am. That is what the chief of staff job is. It is no function other than as an honorary sort of thing.

Whatever he meant by that, I do not know. You would have to call him and ask him that.

Senator MATHIAS. We understand that system.

In Maryland you can get to be an admiral of the Chesapeake Bay if you really work at it.

Judge BELL. Somebody finally started the Georgia Navy so we could give out admiralships, admiral certificates. I was not the admiral; I was just the colonel. [Laughter.]

I have never seen the interview you are reading from.

Senator MATHIAS. I will put it into the record. I will be glad to give the judge a copy of it.

Judge BELL. I don't need it.

[The newsstory by Gene Goldenberg referred to follows.]

(By Gene Goldenberg)

Washington, December 22.—Attorney General-designate Griffin B. Bell, while serving as top legal adviser to a segregationist Georgia Governor, played a key role in thwarting Federal court orders to integrate Georgia public schools.

Bell served as chief of staff to then-Georgia Governor Ernest S. Vandiver from the beginning of Vandiver's term in January, 1959, until nominated by President John F. Kennedy to the 5th circuit court of appeals in September, 1961.

Bell was Vandiver's top legal adviser and chief counsel on matters related to court orders and a heated school desegregation controversy then raging in Georgia. When a Federal judge ordered two black students admitted to the University of Georgia in January, 1961, Bell was instrumental in drafting legislation that:

Gave local communities the option of closing schools rather than integrate.

Assured the rights of students to refuse to attend desegregated classes.

Provided State grants-in-aid for students who dropped out of public schools to attend private academies.

"He (Bell) was very helpful to us," Vandiver, now a lawyer in his hometown of Lavenia, Ga., told Scripps-Howard News Service. "He knew how to get people together to try to solve tough problems."

Vandiver, who ran for Governor on a strict segregationist platform, called Bell, "one of the finest people I have ever known and probably the best lawyer."

I have known." He said Bell transformed the traditionally "honorary" post of chief of staff into an activist post.

"I know the Civil Rights groups will try to make a big thing out of his association with me at that time," Vandiver noted. "But you have to remember that I had almost unanimous support from black voters when I was elected Governor."

As criticism of Bell from Civil Rights groups continued to mount, President-elect Jimmy Carter said he felt "absolutely no doubt that I made the right choice" in selecting Bell, a law partner of Carter intimate Charles Kirbo.

Richard Ashworth, who was Vandiver's press secretary and now is a top official in the Department of Agriculture, said Bell provided Vandiver with "guidance on court decisions and responses to court decisions and orders." Ashworth said Bell also was considered the top aide to the Governor on legislative matters.

When Vandiver ran for Governor in 1958, he was accused by opponents of being "soft" on segregation. He responded by promising that schools would never be integrated in Georgia while he was Governor and that Federal troops would be defied if they were sent into the State.

He endorsed Kennedy in the 1960 presidential race in which Bell served as Kennedy's Georgia campaign chairman. Vandiver later told reporters that he had backed Kennedy only after receiving a pledge that he would never send Federal troops to Georgia to enforce school desegregation.

Upon his election as Governor, Vandiver denounced the Supreme Court's desegregation decisions and announced: "The people of Georgia and their new Governor say to the U.S. Supreme Court that we fight this tyranny at every crossroads. We will fight it wherever it raises its ugly head * * * until sanity is restored in this land."

With Bell's help, Vandiver promptly proposed legislation to prohibit the levying of taxes to support integrated schools, to close down integrated schools and the black schools from which students had been transferred as part of any desegregation move and to enable the Governor to close down any unit of the State University system "to preserve order." These laws were quickly enacted by the legislature.

Bell played a crucial role in resolving the crisis which resulted when Federal Judge W. A. Bootle ordered the two blacks admitted to the University of Georgia and then enjoined Vandiver from cutting off the university's funds under the new State law.

Judge Bootle gave the Governor and legislature a week to make adjustments in the State law which prohibited integration and Vandiver responded with the legislative package giving local communities the option to close rather than integrate and providing State aid to students who chose to attend private schools—a practice later found unconstitutional by the Supreme Court.

These new laws were hailed at the time as a "compromise" to avoid a messy confrontation and possibly massive resistance to court orders through the closing of all public schools, as had been done in Virginia. Bell's defenders, including Ashworth, claim Bell brought Vandiver from a position as a steadfast segregationist to a position as the first Georgia Governor to call for the removal of State laws prohibiting integration.

But Bell's critics, including civil rights activists in Georgia, note that the "compromise" position advocated by Bell was still clearly designed to continue segregation of schools.

In proposing the "remedy" to the legislature, Vandiver said he remained opposed to desegregation but that the State's antiintegration laws "have been transformed by recent decisions and events from possible instruments of defense to instruments of doom at the outset." He said that without new laws Georgia's schools would be "taken over and run" by the Federal Government.

Rejecting resistance to court orders, Vandiver told the legislature: "Defiance, no; private schools offered as a last resort, yes."

One civil rights lawyer in Atlanta said Bell's counsel to Vandiver was typical of the positions Bell took on school cases as a Federal judge. "He always looked for the soft out, for the compromise," said one critic.

Senator MATTHIAS. Richard Ashworth, who was the press secretary to Governor Vandiver, is now an official of the Department of Agriculture.

He characterized your services to the Governor as providing him "guidance on court decisions and responses to court decisions and orders."

"Ashworth said Bell also was considered the top aide to the Governor on legislative matters."

This is a little more than a Chesapeake Bay admiral would be to the government of Maryland.

Judge BELL. I don't think that is so. I do not recall ever being the top aide. He had his own office staff.

I do not know what Richard means by that, but I cannot recall ever having been a legislative aide of any sort.

Just for the record, I would like to say that this time that I was a senior partner in the King & Spalding firm in Atlanta I could hardly have been working as a legislative aide.

I was being provided to give all of this public service as a lawyer. If I was a legislative aide, I have no recollection of it.

He did not say what bill I was aiding, did he?

I do not know. I do not know about that.

If that is important, that can be developed.

Senator MATHIAS. Mr. Chairman, since it has come up—

Judge BELL. Was that in the same Scripps-Howard article?

Senator MATHIAS. Yes. It is in the same Scripps-Howard article.

I suspect that he was led to that by reviewing, as you yourself said you have done, some of the microfilm from the Atlanta Constitution of that period.

For instance, on November 18, 1958, the Atlanta Constitution quoted:

Governor-elect Vandiver declared Monday that his legal advisers are "not even considering" local option but will present new school segregation law to the January legislature.

Skiping down:

Vandiver said Monday that he and his legal advisers concede that present Georgia laws are not sufficient to maintain segregation in the light of recent Federal Court rulings.

He said he did not know just what changes would be recommended but promised new laws will be drawn by the time the General Assembly meets in January.

One of the plans the Georgia lawyers are studying is a South Carolina law which provides that if a white school is ordered to integrate, only that school and the Negro school from which it is to receive pupils would be closed.

The attorneys working on new school laws for Georgia are Charles Block of Macon, B. D. Murphy of Fayetteville, Griffin Bell of Atlanta, and Carter Pittman of Dalton.

It was revealed Sunday that the four had just returned from Virginia, which has already closed some of its schools to prevent integration.

I assume that is what it was based on.

[The news story from the Atlanta Constitution of Nov. 18, 1958, follows.]

VANDIVER DRAFTS SCHOOL BILLS WITH NO LOCAL OPTION

LEGAL AIDES SCAN DIXIE FOR IDEAS

(By Bruce Galphin)

Gov.-elect Vandiver declared Monday that his legal advisers are "not even considering" local option but will present new school segregation laws to the January legislature.

Mayor Hartsfield of Atlanta and other officials have called for local option as the only solution to Georgia's integration problem.

Under such a program in North Carolina, local school boards have the option of closing down or of having at least token integration.

AUTOMATIC CLOSING

Georgia's laws call for automatic closing of a school district as soon as any court orders integration in even one school of that district.

Vandiver said Monday that he and his legal advisers concede that the present Georgia laws are not sufficient to maintain segregation in light of recent federal court rulings.

He said he did not know just what changes will be recommended but promised new laws will be drawn by the time the General Assembly meets in January.

CAROLINA LAW

One of the plans the Georgia lawyers are studying is a South Carolina law which provides that if a white school is ordered to integrate, only that school and the Negro school from which it is to receive pupils would be closed.

The attorneys working on new school laws for Georgia are Charles Bloch of Macon, B. D. Murphy of Fayetteville, Griffin Bell of Atlanta and Carter Pittman of Dalton.

It was revealed Sunday that the four had just returned from Virginia which already has closed some of its schools to prevent integration.

There is considerable pressure in Virginia now to repeal the "massive resistance" laws and replace them with local option.

Vandiver's group also plans to meet with Alabama Gov.-elect John Patterson and Lt. Gov.-elect Albert Boutwell, author of most of Alabama's current school segregation legislation.

Gov. Griffin sharply criticized Hartsfield last Saturday for trying to "throw in the towel" in the segregation fight. Vandiver had no direct comment on Hartsfield's plan Monday other than to say it was not being considered.

Judge BELL. Mr. Halton Perry, I think, was one of the lawyers. Perhaps not Mr. Pitman, but that is not important here. They were lawyers.

The South Carolina reference, that was never used. That is where you close the school from whence the child came.

Senator MATHIAS. I don't want to get ahead of the story.

There were, in fact, a series of bills which were introduced into Georgia's Legislature with the sponsorship of the Vandiver administration. Is that correct?

Judge BELL. Right. Yes, sir.

Senator MATHIAS. Did this group of four lawyers recommend these to the Governor? Do you recall the genesis of this legislative package?

Judge BELL. I am sure we recommended some of them. I do not know if we recommended all of them or not. It has been a long time ago. We may have recommended all of them.

As I say, there were other people working, too, on this. The legislators themselves sometimes come up with an idea. [Laughter.]

Senator MATHIAS. It has been known to happen, yes.

Judge BELL. This was a hot time in Georgia.

Chairman EASTLAND. Senator, your time has expired.

Senator MATHIAS. The chairman has lowered the boom on me.

Let's complete the record up to this point and we will pick it up again.

I would offer the text of these bills for the record. I assume it is the same text that Judge Bell has suggested he has copies of.

Chairman EASTLAND. So ordered.

Senator MATHIAS. They are Senate Bill No. 1, No. 2, No. 3, No. 4, No. 5, and No. 6, which I think might be useful for the record.

[The printed material referred to, from Georgia Laws 1959 Session, was filed with the committee and appears at page 743.]

Chairman EASTLAND. Senator Kennedy.

Senator KENNEDY. Judge Bell, Senator Mathias has been exploring that area which I had explored in earlier questioning.

I think a number of American people, and certainly members of this committee, view that period as a time when the recommendations that were being made to the Governor were made in an effort to subvert or undermine the *Brown* decision.

A number of those legislative recommendations introduced and passed by other legislatures were later struck down, obviously, by the Court.

I am sure you understand that it is the interest of the committee to find out your own role in the preparation of the support of the advocacy of those particular pieces of legislation.

Judge BELL. Surely.

Senator KENNEDY. I think you have responded that you were a counsel and legal adviser in terms of the legalities as you saw them at that particular time of these various alternatives to the *Brown* decision.

You felt that they were warranted and justified in that at least they were going to, if enacted, keep the public school system of Georgia open, while others have viewed it as a way to basically undermine the fundamental ruling of the *Brown* decision.

This I think is where there are differing interpretations as to what your views were then and your actions at the time.

If I could, I would like to discuss our current situation. I would like to get some assurances from you with regard to the various civil rights acts which are in the law at the present time.

When we are talking about the various civil rights provisions, you have indicated your reservations about the use of busing as a means for desegregation and responded, I thought quite candidly, to the earlier questions by Mr. Abourezk.

You have expressed the belief that breaking up the patterns of residential segregation is a sounder solution to the problems of racial discrimination than transportation of children out of their neighborhoods.

I would be interested as to whether you have given any thought or have any suggestions on how that best could be done. Perhaps you would care to give us some assurance that legal action will be taken by the Department to secure modification of zoning and other restrictive land-use laws where these laws have had the effect of preventing minority families from securing housing outside the central city.

I wonder if you would comment on that.

Judge BELL. I would enforce those laws.

I had thought when I wrote the *Orange County, Fla., school case*, which was basically a neighborhood school case, that the Open Housing Act would finally solve the school problem. It has not in most instances. It is a fertile field for the Justice Department to operate in.

I would do what I could about that because I would certainly prefer to have open housing than I would to have employ massive transportation of children.

Senator KENNEDY. Would you move in the cases where there are zoning or other restrictive land use laws which are used to prevent minority families?

Judge BELL. We would move to strike those, yes.

Senator KENNEDY. You would move within the Justice Department to do that?

Judge BELL. Yes.

Senator KENNEDY. In the area of education you have expressed the view I mentioned earlier. Are you prepared to oppose legislative efforts to limit the equitable discretion of courts in fashioning remedies for unconstitutional school segregation?

We have faced those efforts here in the Senate in recent times.

I think it would be very important and useful to have the support of the Justice Department in trying to defeat those efforts which are directed toward reducing the authority and the power of the courts.

Could we rely on the Justice Department under your leadership to support us in turning back those efforts which may be made to restrict the authority of the courts to reach equitable discretion in terms of desegregation or unconstitutional school segregation?

Judge BELL. You can rely on the fact that I am not in favor of reducing the equitable power of the Federal Courts.

I think that the school desegregation law now is in about as good shape as you can get it in. If we leave it alone, we can make progress under the law as it exists now. We ought not to interfere with the power of the Federal Courts.

Senator KENNEDY. In the area of Federal programs, I am sure you are aware of title VI of the Civil Rights Act, which is the section requiring all the departments and agencies of the Federal Government to assure nondiscrimination in programs of Federal financial assistance.

Do you believe that the Department of Justice should play an active role in assuring that Federal grants do not go to subsidize discriminatory activities, wherever they may be or whatever Federal programs those might include?

Judge BELL. I do agree with that. That is the law.

Senator KENNEDY. It has not been very much enforced in a number of programs. I was just interested in getting your assurance that you believe, since it is the law, that it is the responsibility of the Justice Department to insist that that be the case.

Judge BELL. I do believe that.

There are a lot of problems besides Federal grants. There are a lot of problems within the Federal Government itself.

I have been struck over the years by the vigor with which we pursue the States; sometimes we ignore the Federal Government.

I would have some interest in that, too.

Senator KENNEDY. How about the area of contract compliance and the other existing Federal programs that perhaps have not had the strong support of the Justice Department? We have seen that both in this committee and other committees which the members are on.

I think having your reassurance in those areas would be important.

Judge BELL. You can be assured that I will carry out the law and will not ignore any laws. If we failed to carry out the contract compliance law, we would be ignoring this law.

I will look into that.

Senator KENNEDY. Let me ask further if you have taken a position on the equal rights amendment. Do you have a personal view on the ERA?

Judge BELL. I have never taken any position on it. I thought somebody might ask me that question. I have given some thought to it.

I am charged with being a political appointee, and I am very leery about expressing an opinion on a political subject.

From a constitutional law standpoint, I think the ERA would serve to fill a purpose or a lack in the law which now exists.

The 14th amendment with respect to racial discrimination puts on one standard, but with respect to sexual discrimination another.

You cannot justify a law on racial discrimination unless you show a compelling State interest, but that is not true with respect to sex. The ERA would serve that purpose.

Senator KENNEDY. You would view the 14th amendment then to apply?

Judge BELL. Yes. I think the ERA would apply the 14th amendment to women's rights. I think for that reason it is needed. It would probably be an orderly way to work out.

I always think about the trouble we got into with the schools—

Senator KENNEDY. Before leaving that point, irrespective of the ERA, do you also feel that the 14th amendment does apply to discrimination against women, also?

Judge BELL. My view is that it does not now apply but it should.

Senator KENNEDY. That would be something you would be interested in—in seeing that it did?

Judge BELL. Yes.

We are restricted, I believe, generally in the courts to racial discrimination, and it is going to have to be moved to sex discrimination also.

Senator KENNEDY. Moving on, and as you can see the time moves very quickly with us and I hope to get back to some of these areas myself, but I want to get through them.

You responded in the area of wiretap legislation. We have talked ourselves about that. Do I understand you will work with the members of this committee and the Intelligence Committee and the others to try to achieve legislation which will provide restrictions in terms of the wiretap legislation: is that correct?

Judge BELL. That is correct.

Senator KENNEDY. At this time I know you have not studied the details of the legislation which went in as S. 3197, but do you find that that can be a basis for progress?

Judge BELL. I do.

I might say it would make the work of the Attorney General a lot easier, too.

Senator KENNEDY. I agree.

In the area of the recodification of the Criminal Code, I have looked over the questions that Senator McClellan has asked you, but I would like to have your comments now about the importance of the recodi-

fication of the Criminal Code. That is an extremely controversial subject, but it is one which I think is long overdue.

It would be interesting if you would make a comment on that at this time, as to the importance of the recodification of the Criminal Code.

Judge BELL. I will tell you the same thing I told Senator McClellan and Congressman Rodino.

I favor recodification of the criminal laws.

S. 1 has been around a long time and most everybody has had a chance to study it. I think it is time for it to move.

Senator KENNEDY. We don't have to move S. 1 itself necessarily.

Judge BELL. With some things taken out, I think it will work out. Generally, on recodification the answer is, "Yes."

Senator KENNEDY. Fine.

Senator MATHIAS. Will the Senator yield?

Senator KENNEDY. Yes.

Senator MATHIAS. S. 1 in 1977, I would like to advise the members of the committee, is a splendid bill to provide employment for unemployed Americans. It is a job bill. It is my bill, and I hope you will all cosponsor it, work for it, and get it enacted, and the Attorney General advise the President to sign it.

Senator KENNEDY. Good luck in trying to educate all the American people and the ACLU about that.

[Laughter.]

Senator KENNEDY. There are a number of investigations currently taking place in the Internal Criminal Division. They are investigating the CIA mail openings, surveillance of domestic groups by the FBI, the role of the South Korean Government in influencing high Government officials.

Can you indicate your view now whether those prosecutions ought to be carried forward vigorously? Do you have any reason, if you are approved, that those investigations will not be carried forward?

Judge BELL. None. They will be carried forward with vigor.

Senator KENNEDY. In the area of the Law Enforcement Assistance Act, we have new legislation that was passed last year. Is there anything that you can tell us about your own view about the formation and the structure of the LEAA program? Do you support it now generally, or what can you tell us about your views?

Judge BELL. I support it generally, but I want to make a very careful study of the programs, what they have been spending the money on and what they want to spend it on in the future.

I know a good deal about this area. Sometimes you know by looking that something is a good program or not a good program and you do not need so many studies.

I intend to put somebody in there that could do that. I will be taking a careful look at the LEAA.

That is the best answer I could give.

Senator KENNEDY. One of the important areas of responsibility of this committee is in the area of antitrust.

I am just wondering what you could tell us about your views about the role of large economic concentrations of power? How important do you think it is that you have a strong Antitrust Division? Whether

you have, at this time, any ideas about other legislation that ought to be fashioned or what concerns do you have in the areas?

We talked informally about price fixing and the importance of vigorous prosecution in our earlier visit.

I would like, if we could for a moment, to get into the larger view of the importance that you put on a strong antitrust policy.

Could you give us your views?

Judge BELL. In addition to the price fixing, which we discussed, which I think ought to be enforced vigorously, the free enterprise system generates monopolies sometimes.

You have to constantly study monopolization with the idea of reducing it in case it is harmful to the public and to free market concepts.

Also I think you have to pay careful attention to predatory practices where one company is putting another one out of business by predatory practices.

The last thing, I think, is that we have to establish these antitrust sections in the State attorneys general offices. Under the recent legislation, there is \$10 million available to get that done.

Once you start a system in the States where the attorneys general of the States can file suits, you will get a good deal of extra enforcement over what we have now.

Senator KENNEDY. Have you formed any view about divestiture, either horizontal or vertical, of the major oil companies?

Judge BELL. No; but that would be to first determine the monopoly question and that is part of the remedy which you ought to do about divesting the oil interest.

I have noticed those bills and also noticed that the oil industry would like to get rid of the marketing, so that would make me wonder about that approach.

I have not studied it enough, really, to say for sure what ought to be done about any of those things.

Senator KENNEDY. Let me ask, again in the area of the criminal codification, your position on the death penalty?

Judge BELL. I have taken the same position as Governor Carter does. The death penalty is warranted in some cases.

I have not got it worked out in my mind as to what cases. It would be sparingly used.

I think we have been guilty of abusing the death penalty in the past. It has to be carefully used. I do favor the death penalty in some cases.

I can think of some cases where you might murder a prison guard, for example, or an airplane hijacking where some harm comes from it. I do not know. I have not got that in my mind.

I suppose that that will be a policy matter maybe between the Congress and the President.

Senator KENNEDY. I was interested in your personal view.

Judge BELL. My personal view is that we have been guilty of over-using the death penalty in the past, but I would not want to knock it out altogether without some careful study.

Chairman EASTLAND. Senator Heinz?

Senator HEINZ. Judge Bell, I would like to wrap up on the subject we got into earlier regarding conflicts of interest and depoliticalization of the Justice Department.

Before time ran out, I wanted to ask you this: I wanted to know whether you would be willing to agree not to take any role whatsoever in the elections of 1978 or 1980.

Have you given any thought as to whether you would be willing to be a political dropout in these two elections?

Judge BELL. If I am Attorney General, then I would certainly not take a role. But if you are asking me——

Mr. HEINZ. That is the intent of the question. It was assuming that you would be Attorney General.

Judge BELL. Are you asking me if I would take a role if I am not Attorney General?

Mr. HEINZ. No; if you are.

Judge BELL. No, I would not; but I doubt if I would if I were not Attorney General.

I would try to honor the Office of Attorney General.

Once you do it, even if I were not Attorney General, in view of what has happened in the past, I would not be active.

Mr. HEINZ. Were you to leave, would you take a role in the campaign? I understand that your answer to that is no.

Judge BELL. That is correct.

Senator HEINZ. Talking about law enforcement priorities, Senator Kennedy's questions about antitrust, you mentioned that antitrust law enforcement was something that you would pursue. You discussed a little bit of your philosophy about the social utility of monopolies.

I was a little unclear as to what your tests would be regarding when to seek to initiate antitrust action under Sherman or Clayton.

Judge BELL. You do not know because you are not a lawyer, but I have been an antitrust lawyer.

It is very difficult to grasp when something monopolizes or tends to monopolize. Some things are very clear, but sometimes it is borderline.

The case going on now of the Telephone Co., I guess, where it is urged that they ought to divest themselves of Western Electric, for example, that is the sort of thing that you can make a case for by showing that it keeps other people out of the market. Once you keep people out of the market, then the consumer suffers because you do not get as good a product at a lower price.

I do not know that I can answer your question.

Mr. HEINZ. Let's distinguish between regulated monopolies, in which case I would think A.T. & T. would certainly fall for the most part under that.

Judge BELL. That is a regulated monopoly.

Senator HEINZ. Let's talk about nonregulated market systems.

I have had quite an interest in this. We have formed a task force on the House side, where I came from this year, to improve antitrust law enforcement and to improve the manning, and to improve the ability of any law enforcement in that area to be more credible, which was done in part by the passage of the Antitrust Procedures Act, which I think was mentioned earlier.

I am just curious with respect to nonregulated market systems whether you have any tests that you think trigger an antitrust investigation.

Judge BELL. I do not. I do not have a test.

The rule of reason is the test that the courts have fashioned over the years.

You have to take each case and assess it and decide what to do about it. I cannot give you a mechanical formula.

Some people think that all conglomerates ought to be broken down. You have to look at the conglomerate and see.

Senator HEINZ. Along similar lines, I think one of the principles that we all believe in is one of competition, particularly as it protects the consumer in giving the consumer the best possible freedom of choice and hopefully the lowest price.

As you know, Congress has had before it, for at least 2 years, a proposal to create a Consumer Protection Agency.

What is your feeling about a Consumer Protection Agency?

Judge BELL. Consumers are being protected in other ways. We may need a Consumer Protection Agency, but we have to be careful that we do not get too many overlaps in the Government.

For example, the Federal Trade Commission is engaged in anti-trust endeavors and the Justice Department is doing the same. Some of the activities overlap.

If we are going to have a Consumer Protection Agency, we might have a third antitrust division. We would have three then.

So I think there needs to be some study in this field to see who is going to be the chief antitrust enforcer.

That is all I can say about that without knowing the details of the legislation.

Senator HEINZ. I would like to move on to another area which has to do with civil liberties and the protection of privacy.

You have discussed this at considerable extent to this point.

I think you are going to be confronted with this: Whether you will prosecute within the Justice Department perhaps members of the FBI. It is going to be a very difficult decision. I imagine, because on the one hand you have a responsibility for making your standards credible, which you can only do through enforcement.

I am wondering: Do you intend to prosecute within the law enforcement branch of the U.S. Government any wrongdoing, such as "black bag" jobs?

Judge BELL. If the prosecution is warranted, I do.

I have not studied those cases. I know they are pending. There are some other cases pending, too.

It seems to me that several of these time bombs are lying around that I will have to face. I would want to study those. I would not want to prejudge.

Senator HEINZ. One of the last questions I have is this: Have you had a chance to concern yourself with some of the pressures which are placed on business firms and citizens in this country involving the Arab boycott? Have you given some thought to what kinds of policies you would pursue in this area?

Judge BELL. I have not. No one has told me that that was a responsibility of the Justice Department.

If it is, then I need to start studying it.

Senator HEINZ. When questions of infringement on people's civil liberties and rights are involved, as sometimes is compliance with

demands by an Arab government, it would seem to me that the Justice Department might well be involved. Would that not be a likelihood?

Judge BELL. I don't know what I could do with an Arab government.

Senator HEINZ. In the event an American business firm discriminates in this country, I would think that you would have a responsibility.

Judge BELL. I see. Yes, I think so. I see what you are getting at.

Senator HEINZ. From my point of view, there is a very serious responsibility there. If you have not thought about it, I hope you will because I do think it is a very solemn obligation that you would have in that regard.

Judge BELL. I see what you mean. I had not thought of it, but I will.

Senator HEINZ. Thank you, Mr. Chairman.

Chairman EASTLAND. Senator Bayh?

Senator BAYH. Judge Bell, I feel that you might feel as if you have been put upon as a result of some of us having the emphasis that we have put on the Carswell thing. I want to move away from that after this word of explanation.

I hope that we can separate this from Mr. Carswell himself.

The reason some of us are concerned about that is that if we look back over all of the unfortunate acts of the past 8 years, the last administration, the Carswell nomination and the way it was supported was the one fact which symbolizes the Nixon administration's total lack of sensitivity to the problems of discrimination and racism. It is an example of planned mediocrity unparalleled.

I think President Carter is dedicated to excellence. I assume from everything that I have heard about you that you are, too. For that reason we want to make very clear where you, as the chief law enforcement agent in this country, are going to be on this particular thing.

I understand and I think it is to your credit that the personal relationships that you have had with Judge Carswell, both in school and as a friend, and more recently the unfortunate experiences that he has had, would cause you to feel like you don't want to kick a man who is down. That is really not what we are asking you to do.

Let me try to just rephrase this in a non-Carswell way. Because of the activist role as Attorney General you are going to have as far as recommending appointments—struggled with this over lunch to see how it could be done without intertwining the two—will you seek to achieve the appointment to Federal posts at all levels individuals who display sensitivity to the problems of discrimination, those who understand the need and the importance of avoiding discrimination in fact and also discrimination in appearance?

Judge BELL. I will. As I said earlier, I intend to let the national bar association know and counsel on who is up for appointment just to be certain that there is no racism in any appointments.

I am going to take an extra safeguard, plus the fact that we are going to have these commissions, which is another safeguard, but I will do that.

Let me say this: I do not feel put upon by these questions. I am glad we are having a full hearing.

The Office of Attorney General is an important office. I think it is in the public interest to be thoroughly examined, as I am being

examined. I am glad. I hope I do not give the impression that I object to this in any way. I think it is in the public interest for everybody to examine me fully because when I get to the Justice Department, if I get there, I want to be an Attorney General who is trusted by the people and who is open.

So do not hesitate at all on any question that you think ought to be asked.

Senator BAYH. I fear that we have not been hesitating. I appreciate your understanding.

In reaching this determination on whether the nominee has the sufficient sensitivity to the problems of equal opportunity and discrimination and racism, would you consider racial statements that may have been made in the past, standards of personal conduct, and examples such as the involvement in schemes to avoid legal standards of discrimination?

Would you consider in the case of a sitting judge their opinions and records in those cases involving the issues of discrimination and equal opportunity?

Judge BELL. I would.

In those first instances you were talking about, they would create a presumption that the person might not be satisfactory, which presumption would have to be overcome in some way.

Senator BAYH. Fine.

Let me move on to a little different area of discrimination in equal opportunity.

I appreciate the fact that you did endorse the equal rights amendment and that you say that you think the 14th amendment should cover that, but you are absolutely accurate that it doesn't.

The court still has not considered women as persons for some reason or other.

I assume that you would feel personally, and as Attorney General, and the moral influence you have in that office, that you would advocate making a suspect classification just the same as race?

Judge BELL. Right. Correct.

Senator BAYH. We have discussed merit selection. I think all of us are after better judges, a judiciary that would be immune from some of the temptations evident in the body politic.

I want to point out to you that there is almost an inherent conflict between panels that make a decision on the basis of what they describe as merit and an effort or policy toward affirmative action to try to bring into the judicial system citizens who have been discriminated against in the past.

For example, the LEAA conducted a survey last summer and found that although 46 percent of their staff in LEAA were women, there were none at the executive level, none in grades 16 to 18, and only 11 percent among GS-13.

To go further, to give you a picture of the concerns that at least some of us have, at present there are 97 circuit judges. Two are black and one is a woman.

There are 398 district court judges. Seventeen are black and four are women. There are three women serving in senior status, but there is no woman on the Supreme Court.

Right now is there no woman lawyer in the whole United States of America who is sufficiently qualified to be appointed as a U.S. attorney servicing the clientele of 230 million Americans?

What I would like to hear from you is the feeling that you have that at the same time we are going to try to get better qualified judges and U.S. attorneys, we are also going to have an Attorney General who is going to see that the entire system of justice of this country is going to treat everybody equal as far as access to it on the Bench and in the courtrooms.

Judge BELL. I have interviewed many people in the past 3 weeks. I plan to have representative people in the Justice Department. There will be blacks. There will be women. There will be Mexican Americans, Hispanics. I am searching for an Indian lawyer.

I am operating on a standard of excellence. I am happy to say that I have not yet had to depart from any standard of excellence. The people I have will be excellent people.

I think it denigrates groups to say that you have to lower the standards if it is, in fact, not so.

I have not found that to be true yet.

I think we will have black judges. We will have women judges. We will have Mexican American judges.

We do have two Mexican American judges now, I think.

I do not think we will have any problem. I think it is a matter of attitude.

I have come from a section of the country where we have learned to share powers. I think it will be good for America to have that sort of attitude in the Justice Department.

I think you will be pleased at how we are willing to do that. We will take action to see that that is done.

Senator BAYH. I am glad to hear you say that because I feel very strongly about it.

That is not that I suggest you go out here and hire women just because they are women or blacks just because they are blacks, but certainly in the whole pool from which ones chooses people to work in our system of justice there has to be more in these categories than have presently been accepted.

I appreciate that.

Let me turn to another function that has only been touched on briefly here.

Mr. Chairman, I will try to move along.

One of the functional responsibilities you are going to have in administering the system of justice in this country is going to be a very critical one of how we can use the forces of our whole system of justice to deal with the increasing problem of crime.

People, as you know very well, are very disturbed about this. How can we more effectively deal with it?

I must say, Judge, I was sort of making some notes here and I didn't hear the total response about recodification to Senator Kennedy. Did you say you favored recodification but did not necessarily associate yourself with all of the ingredients contained in S. 1?

Judge BELL. I didn't say the latter. I said the former.

I favor recodification.

There seems to be some controversy among the Congress over some items in what used to be S. 1, the old S. 1. I think to make progress we are going to have some negotiation to take out those controversial matters and put them in separate bills and let the rest of the bill move. That would be my attitude about it.

One of them is the official secrets provisions. Nobody knows what a secret is. It is all right to have them make it a crime if you could figure out what a secret is, what ought to be covered.

Another one is maybe the death penalty.

I have heard of two or three more, so I think——

Senator BAYH. I don't want to draw this out, but I wanted to make certain that I had heard correctly that you did not endorse old S. 1.

You mentioned "time bombs" a while ago.

Judge BELL. The last time I saw S. 1 it was 747 pages long, and I never did read it.

Senator MATTHIAS. The new one is much more readable.

[Laughter.]

Senator BAYH. I have had the opportunity to be the chairman of the Juvenile Delinquency Subcommittee of this committee and to look at crime at the early stage.

It seems to me that we have had two problems which are at least partially responsible for increasing crime. One, we wait until too late in the life of the individual who ultimately becomes a criminal to start dealing with the problem and, second, all too often, society's response has been to compound the problem. You take a kid that runs away from home or doesn't go to school and you put him in a jail cell with a three-time loser and then you wonder why you have an 85-percent recidivism.

We passed after 3 years of effort the Juvenile Justice and Delinquency Prevention Act a couple of years ago. It establishes a new office in LEAA to assist and work with State and local authorities, public and private agencies, to really do a job of preventing delinquency and fight juvenile crime really at an early stage.

I'm anxious to know whether you feel as Attorney General you would give this the particular emphasis, the kind of priority status that I think it deserves and really the law requires?

Judge BELL. I have never known that our country on a national level had a criminal justice policy. I hope to establish one. If you do have a criminal justice policy, perhaps the most serious part of it would be juvenile justice, what to do about juvenile crime; how to prevent juvenile crime; how to prevent juveniles from becoming engaged in crime.

I have a very deep interest in that. That goes back to this study we made in Atlanta 10 years ago.

Senator BAYH. When President Ford signed that bill, he said he would sign it but he would not ask for any money, which in essence meant that we had worked for 3 years for nothing.

We were able, because of congressional leadership, to get money in there.

I would hope that because of your close association with the system of justice and your particular interest in the area of juveniles in the Atlanta area, that you could be a positive force to see that this is implemented and to see that we start dealing with problems of chil-

dren and youth before they become delinquents and certainly before they become criminals.

Judge BELL. Senator Mathias asked me and wondered if we could not have a tie-in with HEW on some of these things.

I think that the Federal Government is so balkanized at times that one agency may not be assisting another agency. We will look into that to see if there is any way to have a coordinated effort, besides financing this.

If we are going to do anything about crime in America, we have to start at the bottom with the juvenile.

Senator BAYH. A moment ago you mentioned that you were thinking about taking DEA out of its present status and bringing it under the Justice Department.

Judge BELL. Bringing it into the FBI.

Senator BAYH. Yes, the FBI.

One of the things that has been apparent and I think sad is that some people have on occasion yielded to the temptation to try to politicize the confrontation on drugs.

We are all against drugs. The question is how we solve it.

When we look at the studies that we conducted in our committee, we found out that last year about two-thirds of all of the arrests and convictions in the area of narcotics were for people who possessed small amounts of marihuana.

I would like to ask you if you feel that in light of the fact that we are going to have limited law enforcement resources, and also considering the State and local and Federal relationship in the area of criminal law enforcement, does it not make more sense in DEA and throughout our Government that we focus our efforts on the major traffickers and the major conspiracy cases, the drugs of high abuse potential, and that this is really where we ought to put the emphasis?

Judge BELL. The Federal emphasis.

Senator BAYH. The Federal emphasis.

Judge BELL. Exactly.

We have got to get away from the idea of making statistics. We have got to find out what it is we want to do and do it. It would be the major traffickers that we would be after.

Senator BAYH. Another item that was apparent, which was established in the Treasury Department, was a narcotics traffickers' tax program which was designed to really zero in on these characters you could not get any other way and hit them with a tax case.

Unfortunately, Mr. Alexander came in and that program went right out the window.

So we have not been able to bring that emphasis to bear on white-collar drug kingpins, the people who sit up in their walled-paneled suites and peddle this poison out on the streets.

What would be your judgment about reinstituting this particular kind of program so that we would really be able to have another weapon to use against those high level peddlers?

Judge BELL. To the extent that I could do it, because in the Treasury Department it might be outside my jurisdiction; but I think what I would do is make an effort to coordinate with other departments of the Government for these goals, such as that, to do something about trafficking in narcotics.

I think that was done in the years gone by. At one time, in the early 1960's, I know that the Attorney General was bringing people from other departments together to try to do something about these things.

I would try to go back to that system.

I hasten to say it may be being done now, for all I know.

Senator BAYH. Let me say that it is not. I say that from the perspective of someone who has studied it a long time and come to the opposite conclusion.

We had some rather tragic examples of people who played politics right up at the ultimate level of our Government where we got involved in a foreign policy endeavor to try to determine what the Turkish policy should be as far as heroin is concerned, and what we have done in a relatively short period of time is we have gone from a situation where most of our heroin came from Turkey to a situation where now most of our heroin comes from Mexico. It comes right in across the border.

I would like to ask you just to repeat once again, or to define a little bit more clearly, as Attorney General I hope that you could deal with this with the State Department, the Treasury, to really coordinate our efforts to deal with the problems we have now of heroin coming across the border, of guns being run across the border in larger numbers.

Unless we have a concerted effort to try to do that and emphasize those abuses that create the greatest potential harm to society, we are going to continue to go from one headline to another and the number of abuses is going to go up.

Judge BELL. I would try to employ what Governor Carter calls the cluster concept. That is to bring groups together, everybody who has an interest in it, I would try to take the leadership in doing something about that.

There are certainly areas where the Attorney General needs to lead. Wherever I see those areas, I will attempt to be the leader.

Senator BAYH. Let me ask one last question. I think my time has about expired.

In the LEAA subsection that deals with juveniles, the new office in LEAA of Juvenile Justice, the 1974 act delegates to that office the administration and policy direction of all LEAA juvenile delinquency programs. What we are trying to do is really change the emphasis, to stop doing the same old things with new money.

You have been very much involved with prison reform. It seems to me it doesn't make any sense just to build a new prison, and put in the plate glass and the chrome and steel and a nice structure, if you don't deal with the programming more effectively on the inside of those prisons; or, in my judgment even better, to deal with the problems of the individual before he gets in there.

As Attorney General would you delegate to that office the authority to run these juvenile programs as the 1974 act mandates, which has not been the case in the past?

Judge BELL. I would with LEAA. As I said earlier, I am going to put all this on the Deputy. I want to have everything from the investigative forces through the prisons with one person to be accountable. This would be part of it.

We are going to give emphasis to education. We will try to rehabilitate people by teaching them how to do something.

If you will check any prison, the educational attainment level is very low in any prison in America. We are going to try to do something about that, so that people can be brought to their level of educational achievement.

We would do that.

Senator BAYH. Mr. Chairman, let me say that from what I have learend from talking to those who are familiar with Judge Bell's experience and concern in the Atlanta area, and as a member of the Federal judiciary, and through by personal conversations with him, this is one area of strength that has been overlooked in some of the discussions that I have read in the media, that he has shown a great deal of compassion and understanding as to how we deal effectively with the problems of children before they become the problems of adults, and the problems of a community that is afraid to go out on the streets at night.

I must say I find it rather exciting to think about that kind of person sitting down at the Justice Department, which is a little different from the kind of attitudes we have had in the recent past down there.

Chairman EASTLAND. I have a letter from Judge Coleman which I will make a part of the record.

[The letter referred to follows.]

U.S. COURT OF APPEALS,
FIFTH JUDICIAL CIRCUIT,
Ackerman, Miss., December 20, 1976.

HON. JAMES O. EASTLAND,
U.S. Senate,
Ruleville, Miss.

DEAR SENATOR EASTLAND: It would be impossible for me to express the elation I feel over the selection of the Honorable Griffin Bell to be Attorney General of the United States.

In the ten years in which I had the privilege of serving with him on the United States Court of Appeals for the Fifth Circuit I was more than impressed with his outstanding legal ability and his judicial fairness. Moreover, he is a keen student of history, government, and public affairs in general.

His departure from our Court was a great loss, which can now be replenished on a national scale.

Having had considerable experience of my own in such matters, I can definitely say that Griffin Bell most assuredly would have been my own choice for Attorney General had I been the one vested with the power to make the selection.

I am certain his nomination will have your vigorous support and I join many others in actively soliciting it.

With best wishes, I am

Sincerely yours,

JAMES P. COLEMAN.

Chairman EASTLAND. We will recess now until 10:30 a.m. tomorrow. [Whereupon, at 5:05 p.m., the committee recessed.]

NOMINATION OF GRIFFIN B. BELL

WEDNESDAY, JANUARY 12, 1977

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to recess, at 10:15 a.m., in room 2228, Dirksen Senate Office Building. Senator James O. Eastland, chairman, presiding.

Present: Senators Eastland, Kennedy, Bayh, Abourezk, Riegle, Sasser, Mathias, Scott, Chafee, and Heinz.

Also present: Francis C. Rosenberger, chief counsel, and J. C. Argetsinger, David Dixon, and Britt Singletary, of the committee staff.

Chairman EASTLAND. The committee will come to order.

Senator Mathias?

Senator MATHIAS. Mr. Chairman, I would be glad to defer to those who have not had a second round of questioning.

Chairman EASTLAND. Senator Abourezk?

Senator ABOUREZK. Judge Bell. I would like to get into the area of national security wiretapping and discuss briefly the question of inherent Presidential authority.

I know that your position at one time in the past has been that the President has some sort of inherent power in the context of foreign affairs to initiate national security wiretaps without a warrant.

I want to refer, if I might, to Attorney General Levi's testimony before this committee last year. It was in the context of the national security wiretap bill in which the Justice Department insisted on retaining a provision that would state that this bill does not touch the inherent constitutional authority the President might have to wiretap without a warrant.

Attorney General Levi agreed during his testimony here that—and I just want to quote what he said in response to a question that I asked him: "Would you agree that the Congress cannot define what the President's constitutional powers are in this or any other area?"

Mr. Levi's response was:

Well, I've already stated that in terms of the ultimate in his constitutional power, it cannot be limited by the Congress, but I think there is an in between area where if there is a procedure which fits the need, the courts would interpret the constitutional power in light of that avenue which has been made available to the President.

I asked him once again: "But even that cannot be defined by the Congress, can it, if it is indeed a constitutional power?"

Mr. Levi said: "I think it can be." And he said: "I think this bill, the national security wiretap bill, does define."

I wonder if I might get your views in that area on what you believe the President's inherent power is to conduct warrantless national security wiretaps?

TESTIMONY OF GRIFFIN B. BELL—Resumed

Judge BELL. The President has this power to conduct the foreign relations of the Nation. That would be the premise, I assume, for this activity if he wanted to engage in it.

This is like so many things in the Constitution. There are other things under the Constitution. There are other rights of the American citizens to have their privacy, to be accorded their rights under the fourth amendment, and there has to be some accommodation, as I see it.

I think that is what Attorney General Levi had in mind; that is, some accommodation without eroding the powers of the President but to accommodate his powers to other constitutional rights under the Constitution.

My view, based on my conversations with Attorney General Levi about what his are, is that I think it is an essential thing to safeguard the rights of American citizens. Therefore, the President's power would have to be accommodated to that end.

All of these things come up under the same Constitution.

There is always a balancing going on in the constitutional rights area.

So I can see how it would not be impossible—as a matter of fact, it would be feasible—to accommodate his power under some restraints where you would safeguard the rights of American citizens.

That brings me to the wiretap bill. That is a way to accommodate it.

Senator ABOUREZK. Specifically, then, do you believe that the President has the power, whether inherent or not, to wiretap American citizens without a warrant?

Judge BELL. That is a very hard question.

Senator ABOUREZK. It is a very important question.

Judge BELL. I understand that.

It is one that I hope, if he has this power, I would certainly try to arrange that it would not be used. I would pledge to do that.

Senator ABOUREZK. The question is: Do you believe he has the power? Not if he has it, but do you believe he has the power to wiretap without a warrant?

Judge BELL. In foreign security?

Senator ABOUREZK. In any area—foreign security, criminal, or what.

Judge BELL. I know he does not have it in criminal. That law has been changed.

In the foreign area involving an American citizen, I have some doubt that he does; but I am not prepared to say without making an exhaustive study of the question.

I would go this far. I would say that as long as I am Attorney General, if I have anything to do with it, that will not happen.

Senator ABOUREZK. Along that line, when we are discussing the drafting of another national security wiretap bill this year, would you agree to delete a provision that tries to define what the President's constitutional authority is?

You see, the debate last year was whether or not Congress ought to try to define it. If the President has the power, then he has it.

Judge BELL. You do not have to reserve it in the legislature.

Senator ABOUREZK. That is what I am saying.

Judge BELL. That would not bother me—to delete it.

Senator ABOUREZK. It would not bother you to delete it?

Judge BELL. You cannot cut down on his power by some saving clause in a statute.

Senator ABOUREZK. I guess, then, that means you would agree to delete that provision in the legislation.

Judge BELL. I would agree, but the President might not agree. It would suit me all right.

Senator ABOUREZK. What is your position?

Judge BELL. My position is, it is not needed.

Senator BAYH. Would the Senator yield a moment?

Senator ABOUREZK. Yes.

Senator BAYH. I think the Attorney General will soon find out that, although he might agree, there may be members of this committee that would not agree.

As one who is involved in the same kind of concerns that Senator Abourezk was, this provision was added really on the basis of getting enough support to move any kind of legislation through this committee and through our Intelligence Committee and hopefully through the Congress.

If you and the President are with us on this particular thing, then I think the numbers on this side of the table might change; but that is a different dimension.

Judge BELL. Based on what I have learned about the intelligence area. I think that the bill is the right approach. I say again that I do not know it is necessary to reiterate or iterate the President's power under the Constitution by some saving clause in the statute. I do not think that adds anything to his constitutional power.

Senator ABOUREZK. I personally think it would cloud up any future litigation on the matter if you put that in there. If he has the power, it would have to be defined constitutionally.

Judge BELL. I think the way to approach this is not to worry about the President's power, but to get the President to accommodate to a system which safeguards the rights of American citizens. That would be the approach I would take.

Senator ABOUREZK. That would be done constitutionally through a warrant procedure, of course?

Judge BELL. Right.

Senator ABOUREZK. Judge Bell, I have talked with you—

Judge BELL. Let me add something here.

I am getting in deep water on intelligence matters, but I believe I read in the newspaper that Attorney General Levi said that he had not permitted surveillance without a warrant in 18 months of an American citizen. I think that is stated negatively. I do not believe he said he would not do it.

Senator ABOUREZK. He just said he had not done it yet; is that right?

Judge BELL. Yes.

There is a difference there.

If you have a strong Attorney General who believes in the constitutional rights of the individual, I think that is the way it is going to be for a long, long time.

Senator ABOUREZK. On a subject that we talked about when you were visiting up on the Hill here a week or so ago, I discussed with you a question about the FBI. It happens to be a matter of personal experience with me of the FBI leaking raw data on a member of my family that made some very serious allegations and that were not true and, in fact, the Director of the FBI, Clarence Kelly, testified under oath at a later date that they were not true.

However, the political damage had all been done by that time.

I am curious to know your position on matters of this kind. Would you make every effort to prevent the FBI from using false allegations, as they were in this case, or any kind of unproved allegations for political purposes against people they may not necessarily agree with politically?

Judge BELL. I would, and I will go further to say that I would make every effort to prevent the leak of raw data on any citizen. I think it is highly improper to charge someone and to invade their privacy with some raw data, by leaking raw data.

I think that is why we have courts and that is why we have due process of law.

I have had about three weeks' experience now where I felt I had been stripped of my privacy and denied all forms of due process of law. If I ever had any doubt about it, I won't in the future.

[Laughter.]

Senator ABOUREZK. I want to lay this out for the public record.

We also talked about the FBI's presence on Indian reservations. It is pretty common knowledge at this point that the FBI is not very welcome out there. The manner of their conduct on the Indian reservations has made them seem like an occupational army, especially out in some of the South Dakota reservations where there have been acts of violence between the Indians themselves.

Would you have any comment on how you might change that system and make it an Indian investigative force rather than a non-Indian investigative force, as it is, so at least those people do not think they are being invaded by outsiders?

Judge BELL. Without judging or pre-judging the FBI, I would say, based on my own life, particularly the past 15 or 20 years, that every Government institution has to be sensitive to the merits of others, especially minorities. This would include the Indians.

I would hope that the FBI would take measures so that the Indians would trust the FBI. To do that, I think we would probably have to have some people who understood Indian problems in the FBI, maybe an Indian investigation unit or something of that sort.

That would be true with all minorities. Wherever that is going on, we will try to stop it.

Our country is very different now from what it was 20 or 30 years ago. You do have to be sensitive to not only all Americans, but all groups, a lot of group thinking in the country. The Indians are a group.

So I will try to accommodate the FBI techniques and modus operandi to those concerns.

Senator ABOUREZK. I have one other area I would like to cover during this round of questioning.

Last year I introduced, along with some other Members of Congress in the House, a Grand Jury reform bill.

I think you have been in law long enough to know that the grand jury is an institution that has been greatly abused by prosecutors. In fact, there are no procedural due process rights granted to anybody who is accused by a grand jury. They are brought into a grand jury room. Their attorneys are not allowed to be present with them. The prosecutor is entitled to say anything he wants to in order to make any kind of allegation. The indictment usually results when the prosecutor wants it done.

I am curious to know if you would be able to support a grand jury reform bill that would provide for some semblance of procedural due process in the grand jury proceeding?

Judge BELL. I would. I am not certain, though, that I would allow an accused to have counsel in the grand jury room.

We have a law of that sort in Georgia where anyone holding political office could take his lawyer in the courtroom, in the grand jury room. It was not a right that all citizens had.

Whenever a politician, a public officer, was charged, they would have a trial inside the grand jury room.

I would, also want to consider whether we need a grand jury in most procedures or in most crimes. Some States are able to get by without grand juries, but I know that there has to be some sort of reform so that the prosecutor does not control the grand jury. That is what you are saying, and I agree with that.

Every lawyer who is around the courthouse knows something about the courthouse and knows that that goes on.

There need to be some safeguards built into the system. I am not certain that we ought to have a trial in the grand jury.

Senator ABOUREZK. Do I hear you say that you would be against allowing the attorney inside the grand jury room, an attorney for the accused inside the grand jury?

Judge BELL. I am not saying that. It might be that you could have the attorney, as you now do in a contempt case, outside to advise. That goes on in some of the States.

But to have the full due process, represented by counsel hearing inside the grand jury room might impede the system.

I would have to study that.

I will say this: I know there are abuses in the grand jury system. I have an open mind and I am prepared to do something to make it better, but I am not stating I would go that far. I have not seen your bill, however.

We will talk about that as we go along. I think you can be sure I recognize the problem.

Chairman EASTLAND. Senator Abourezk, your time is up.

Senator RIEGLE. Are we going to finish the second round before we go to a third or does the rotation continue?

Senator MATHIAS. Well, Senator Heinz—

Senator HEINZ. I have participated in a second round.

Senator MATHIAS. Let's let Senator Riegle go ahead.

Senator RIEGLE. I think Senator Sasser has not had a second round.

If you have something that pertains to what has just been discussed that you want to continue a bit, that would be fine with me.

Senator MATHIAS. I am very much interested in that subject, but I can come back to it.

Senator RIEGLE. Let me say, Mr. Bell, that I appreciated your efforts yesterday and today to provide full answers. I am sure that is appreciated by all of the members of the committee.

There are several things that I want to go over in this round, if I may, because I want them to be clear in my mind and clear on the record.

Judge BELL. All right.

Senator RIEGLE. You resigned from the Federal bench when exactly?

Judge BELL. March 1, at 12 o'clock, 1976. That is 12 noon.

Senator RIEGLE. You served for 14 years?

Judge BELL. A little over 14 years. I began service on October 6, 1961.

Senator RIEGLE. May I ask what occasioned your decision to leave the bench at that particular time?

Judge BELL. I had concluded over a period of a year or two that it was not a rewarding experience to me personally any more. I did not enjoy it. I had gotten tired from the heavy caseload. I did not have time to reflect upon decisions any longer. I had gotten to the point where I could do my work only by having three law clerks. For years I had only one. I had gotten up to three. I had two secretaries. I was running a production line. I did not enjoy doing that.

I suppose there are a lot of things in your mind that you do not know about. Maybe the work was not as exciting as it was in the 1960's. I don't know about that.

Certainly the caseload mix was not the same. There was a heavy criminal load. You would not find too many lawyers who wanted to be a judge on a criminal court.

So over a process of months, maybe a year or two, I came to that conclusion.

Senator RIEGLE. Was there any, in terms of your decision as you can recall it, connection between the decision to leave at that time and the possibility of involvement in the Carter campaign, which at that point was really starting to pick up steam and show some life?

Judge BELL. If I had done that, I would not have enough judgment to be Attorney General because at the time I left and while I was in the process of leaving, Governor Carter had not even won a primary, as I remember. People were saying that they did not know him.

Senator BAYH. Excuse me, judge. Would you not look at me when you make that comment?

[Laughter.]

Judge BELL. I do not think he had won any primaries. He might have at that time, but he was just a man from Plains, Georgia.

Senator RIEGLE. You are saying—

Judge BELL. I would not stake my future on what he was going to do at that time.

Senator RIEGLE. That really had no bearing on your decision? Any suggestion anyone would make to that effect is incorrect; is that right?

Judge BELL. Yes, incorrect.

I left the same law firm I went back to. I went back in the very same status I was in when I left.

If you will see a Martindale listing, which will be the next Martindale, I believe it is out by now, you will see my position in the firm. If you go back and look in 1961, you will see me in the very same slot I was in.

Senator RIEGLE. I see.

Judge BELL. I did not even examine the partnership agreement. I asked one question: "Do you still have the same partnership agreement?" They said they did, and that is all I needed to know.

Senator RIEGLE. Let me raise a different question with you. Have you yet had the opportunity to talk carefully with the President-elect about the procedures that you and he would follow in terms of basic policy decisions within the Justice Department?

In other words, if you should reach a judgment that you want to initiate action in a given area, whether it be antitrust or whether it be with respect to an overhaul of the FBI, or what have you, what operating procedure have you worked out with him in terms of what independent latitude you have to move on these things and at what point would you be required, for example, to go and secure authority?

Judge BELL. I have not worked it out fully. I have some understandings with him.

One was appointing people to be in the Justice Department. I had an understanding that I would do the appointing but I would advise him before making an appointment; and he might want to veto it.

He did not use the word "veto," but it is the same thing. He would have the choice to say, "Well, I do not want that person."

On operating the Justice Department generally, we have an understanding that I am to operate it. If I want to check something with him, I can; but I have authority to operate it.

We have never discussed the intelligence aspect, but we will get around to that.

Last Thursday I had to stop worrying about the Justice Department and get ready for these hearings, so I have not finished everything I need to do.

Now, on antitrust policy, he has told me that he wants to have a vigorous antitrust enforcement policy.

We have discussed the FBI two or three times. We have discussed it generally.

We have discussed the LEAA at least once and maybe twice.

A lot of things in the Justice Department we have not discussed because he is not a lawyer and there are a number of things, perhaps, that I do not know enough about at this time to go over with him. I want to go over some things with him, but his way of operating is to find somebody to take over something and he expects them to run it. He holds them strictly accountable.

So if something goes wrong with the Justice Department, it would be my head.

By the same token, I will have a wide authority to function.

I have read all of his promises that he made during the campaign, the compilation of those. I understand his views. I know his general policies. Of course, I will try to conform to those.

If the time comes when I cannot, I will advise him and he may want me to leave.

Senator RIEGLE. Senator Mathias?

Senator MATHIAS. I believe you are aware, Judge, that Attorney General Richardson during his tenure in the Justice Department established the policy that a log would be kept. This relates directly to the operation of the Department. A log would be kept of all contacts made on specific matters.

Calls from the White House, calls from Members of Congress, calls of every kind made to the Justice Department with reference to any case, with the exception of press inquiries—what would be your policy with respect to keeping such a log?

Judge BELL. I expect to keep that. If needed, I am even going to make it tighter.

I am going to look at it just as soon as I can get to that. I want to do that for my own protection and also for the protection of the public. I think the public would be entitled to know that that was going on. I suppose the log is public information. I think the press ought to be an exception.

Senator HEINZ. Would you yield?

Senator RIEGLE. Yes.

Senator HEINZ. In response to my good friend from Maryland, in fact, yesterday, I think it is correct, Judge Bell made a pledge to this committee that he would keep such a log.

Judge BELL. Senator Mathias told me when I visited with him last week about the log. I had been aware of it. It seems to me I had heard of it before, but not specifically. That is the reason I was able to answer yesterday.

Senator RIEGLE. Coming back to your relationship to the President, the President has veto power over the top appointments that you put forward to him.

Does the same thing apply in policy areas? Is that the general understanding? That is, if you were to decide, for example, to proceed with a certain kind of antitrust action, would it be the practice and would you anticipate to go to the President and tell him: then he would say yes or no? Or do you consider yourself having independent action in that area?

Judge BELL. I am independent in that regard.

He has only a veto over personnel. He never asked for anything like that, and I doubt that I could agree to it.

Senator RIEGLE. In other words, you would not be comfortable serving under that kind of system?

Judge BELL. That's right.

The Justice Department is a vast institution. There are all kinds of things going on there. I could not function if I had to check those sorts of things out.

Senator ABOUREZK. If I may interrupt, I wonder if that would apply to your decisions on whether to support a warrant for wiretap?

Judge BELL. That would directly involve him, and I ought to talk to him about that. That's part of the accommodation I was talking about.

To make progress in this area, based on what I have seen so far, it is going to require some cooperation between the Executive and the Congress and the Judiciary through the warrant procedure.

I would discuss that with him.

Senator ABOUREZK. He would not have a veto over it, would he?

Judge BELL. No. I would have to carry out my own oath and my responsibility. The Attorney General is not a constitutional office; it is a statutory office. Nevertheless, I am under oath and I would have to do what I thought was right about that.

Senator ABOUREZK. That would mean that you would recommend that the President would sign such a bill if you had to have a warrant for every kind of wiretap?

Judge BELL. Right.

Senator RIEGLE. I have two other things in the time that remains.

I see one of the key responsibilities that you would have over the next 4 years as recommending prospective members to the Supreme Court. It is likely that sometime in the future that need will arise.

Frankly, we talked about the Carswell thing at length yesterday. My greatest concern with it is not so much looking backward, but looking ahead.

If I thought there was any chance under the sun that a nominee of that general caliber would be put forward by this administration, then I would be very hard pressed to feel good about it or to support your nomination or other things.

While we have not commented quite that directly, what I would like is to get some feeling from you now as to the kinds of qualifications and the general criteria that you would tend to apply.

I assume the first place the President would look for a recommendation for someone to serve on the Supreme Court would be to his Attorney General. That is an awesome responsibility.

I would like for the record some clear sense from you as to the tests you would tend to apply to somebody or the screens that you would use to try to identify candidates or perspective nominees to the court.

Judge BELL. That is an awesome responsibility.

This would assume that the President is not going to have a nominating commission for Supreme Court Justices. I am not saying whether or not that will be done.

To the extent I have something to do with it, I will pick people only of excellence. No. 1, excellence as a lawyer or as a public servant with a demonstrated record.

I will probably try to find someone who has some public service record.

You run a high risk of appointing someone to the Supreme Court who has never had any public service record. You can get the best person, the best lawyer you can find, but you might not know for sure just what is going to happen.

The Supreme Court may be our most important institution. It certainly has more to do with the lives and the fortunes of people than most anything else.

I would not want to do anything except make the Supreme Court better.

I have served on a court. I think I know a good judge when I see one. I think I can almost predict who is going to be a good judge.

The appointing power would be a whole lot different from writing a letter for somebody.

Senator RIEGLE. How about representatives of the society as a whole?

One of the obvious shortcomings of the court, in my judgment, is the fact that there is not a woman there. I don't just mean one necessarily, but I mean the fact that there is not one I think troubles many people.

Judge BELL. That has a lot to do with the basis for appointment. There are some very good women lawyers. I have interviewed some since I have been the designee as Attorney General. I do not think we would have any problem finding people who measure up to the standard of highest excellence amongst any minority group. That is the one thing I have learned. You do not have to lower standards in this country. There are some very good people in all groups. I have been interviewing them.

Senator RIEGLE. So you would be sensitive to the question of underrepresentation?

Judge BELL. Oh, yes. One could hardly lose sight of that. It is something that is with us on a daily basis.

Senator RIEGLE. That leads to my last question.

When we were talking yesterday about the research process to come up with candidates for Attorney General, and there is some relationship here in that this is an equivalent process, you said yesterday in your testimony, "We had a hard time finding them." That was namely people qualified to be Attorney General.

I have thought about that since yesterday. I am not suggesting it is easy to find them, but, on the other hand, there are 214 million of us in the United States. There are an awful lot of people who are in the practice of law who have been in public service.

I want to understand a little better—

Judge BELL. Did I say, "qualified to be Attorney General"?

Senator RIEGLE. Let me read my comment before yours.

It was to this effect. It was in the course of a colloquy that we were having:

To many people this is sort of a troubling aspect. One can argue whether it should or should not be, but there are a lot of folks in the country and a lot of people qualified to be Attorney General.

We were talking about whether friendships and close relationships had some bearing on the decision.

My most immediate words were "people qualified to be Attorney General."

You interjected at that point and said:

We had a hard time finding them. I was not seeking this job. We were looking for someone. The President finally chose me.

I take it from that that you were involved in the process of scouting for prospects for Attorney General.

Judge BELL. I did not mean that we had trouble finding people qualified to be Attorney General. There are many people qualified to be Attorney General.

What I meant was that Governor Carter had a hard time finding someone who he wanted to name Attorney General.

That's a whole different thing.

I recommended several people to be Attorney General. I don't care to give their names, though I would give them to you privately.

I think if you saw the people I recommended, you would think that, "He really knows how to pick good people."

But when the President is picking his Attorney General, I suppose he has some criteria in mind that some outside person, like me, would not use. I just picked good people.

Senator RIEGLE. Let me ask this—

Chairman EASTLAND. Your time is up.

Senator SASSER?

Senator SASSER. Judge Bell, yesterday we got into, briefly, a discussion about antitrust activities. The accusation has been leveled that the Justice Department's Antitrust Division has not been as active as, perhaps, it should have been over the past 6 to 8 years.

I want to ask you, sir, if you agree with that assessment. If so, what steps would you take to reactivate or to energize this vital division of the Justice Department?

Judge BELL. That is a hard question to answer because I read a speech that Mr. Baker, the Assistant Attorney General in charge of the Antitrust Department, made to the Federal Bar Association I think on October 26. This was a public address.

In there he said he had 90 grand juries going on investigating price fixing.

I do not know what the history of the Antitrust Division is, but it struck me that that is a lot of activity. When you have 90 different grand juries investigating price-fixing schemes, that is a lot.

In addition to that, Mr. Baker did go to Chicago in the Box case and asked that severe sentences be imposed. I think maybe all pleaded nolo contendere, if not guilty.

In that area, it seems to me that they are fairly active, but I have not been there to talk with them. I know something about the field.

If I am confirmed, that will be one of the first things I will do—go to the Justice Department Antitrust Division, find out what they are doing, and find out what they are doing in the regional offices they have, and see if they are doing what they ought to be doing.

If they are pursuing a vigorous course and enforcing antitrust laws, then OK.

That is about all I can say about that.

Senator SASSER. Let me ask you this: Does King and Spalding—and I assume that it does—operate in the field of antitrust?

Judge BELL. We have nine lawyers in the antitrust section of the firm. When a case gets in litigation, whoever in that section is working on the case moves over into the trial department to try the case. They help the trial lawyers with the case.

So we have a number of lawyers working on antitrust.

We have only one grand jury investigation that we have anything to do with, and that is not a regular client, but a client from another section of the country.

Under the statement I filed yesterday, I would be disqualified in that case.

The nine lawyers in the antitrust section spend their time counseling with regular clients on the antitrust laws and how to obey the antitrust laws.

We have a unit that we can send out to a client and get all the top management there and explain some of the laws, such as the Robinson-Patman Act, which very few people can understand.

We think we have a way of explaining it.

That is the sort of thing we do. We call it "counseling," antitrust counseling.

Today you cannot represent a company without having people who understand the antitrust laws.

Senator SASSER. I assume that as an appellate judge on the Fifth Circuit Court of Appeals, on occasion you wrote opinions or heard cases that dealt with antitrust and antimonopoly laws?

Judge BELL. I did.

Senator SASSER. Let me ask you this: In view of your experience in the active practice of law, advising clients with regard to the antitrust laws, and also your experience as an appellate judge hearing antitrust cases, is it your view that the present antitrust laws are what are needed to keep our free enterprise system healthy and to encourage competition? Or do we need additional legislation to restrict the formation of monopolies and cartels?

Judge BELL. The weakness in the system is not in the laws. We have good antitrust laws. We have adequate laws in most instances.

The weakness in the system is that it is easy to beat the system. The court processes are so complicated, so slow, that once a case starts, it never seems to end. All you do is just stay in court. You can go on for years in court without anything being done.

To really enforce antitrust laws, we are going to have to do something about speeding up the processes of the courts. There are a lot of people working on that now. I know a lot about that. I am on three or four different groups studying that.

Even the American College of Trial Lawyers is working on that.

The Pound Conference had something to say on that subject.

As long as the court system is not adequate to finish a case within a reasonable time, it is difficult to enforce the antitrust laws. That is where the problem is. That is more so than the laws themselves.

Senator SASSER. Let me ask you, sir: What would be your view of the method with which we should approach speeding up of this process? Is this a procedural matter which addresses itself to the courts and one that the courts should solve or do we need legislation giving antitrust and antimonopoly cases first priority, or do we simply need more courts?

Judge BELL. We need judges who will give their attention to a case of this sort. When it gets into court, we need to follow it closely and not just let it flow through the court.

If a judge keeps tight control over discovery and sets the stages where certain things have happened, you can speed up the cases. The way the cases go through the courts now, most courts are very busy, the judges are very busy, and they have more cases than they can handle.

You start filing motions, and that may take 6 or 8 months. Then you get into discovery. That may take 2 or 3 years. Finally, you maybe get around to having a pretrial conference and finally define the issues. In a rare case you finally get around to a trial.

All this is slow. You have to have a judge or a magistrate right on top of these cases. We call these complex cases, complex litigation.

The manual that tells you how to handle a complex case itself is very complex. They are just now writing a new manual. It seems to be more complex than the old one.

We seem to have lost our ability to simplify things.

I know a lot about this. I intend to get into this. It will be the first time the Justice Department ever got into this.

We have been leaving the court rules to the Standing Committee on Rules of the Judicial Conference. They have been sending rules into the Congress under the Rules Enabling Act.

I intend to get the Justice Department to look into the same thing, sort of on a parallel course, because something has to be done about this.

Think of the expense and the waste of resources that are involved, aside from the fact that the antitrust laws are not being enforced.

This is not just in antitrust. It is in a lot of areas where the public policy is concerned.

Senator SASSER. Let me say this, Judge Bell: Is it not reasonable to say that if the appropriate lawyers in the Justice Department would push the cases faster through the court, this would put additional pressure on the courts to try to move the litigation along?

Judge BELL. That would help some, but you finally have to get the judge's attention.

I think the only thing different about me as Attorney General is that I might go to court. When there is a big case on, it would not be unusual for me maybe to appear in the case at some stage in order to see if we could expedite some of these cases.

I know the judges of America pretty well. They all want to do a good job. They just have more to do than they can do.

We will be going at that from another side trying to get some relief for the courts.

Senator SASSER. The reason I have pursued this line of questioning, Judge Bell, is that I think the feeling is widespread among the people of this country, particularly among the people of my State, that they are being victimized. They feel, rightly or wrongly, that they are being victimized by price fixing and what they view as monopolistic practices on the part of large concentrations of the economic power in this country.

I am hopeful that if you are confirmed as Attorney General, that you will carry out—and I am confident that you will—your feeling that we should come forward vigorously with antitrust and anti-monopoly litigation.

Mr. Chairman, I have no further questions.

I would like to offer for the record a clipping from the Atlanta Constitution of December 24, 1976. I would like to tender that now.

Chairman EASTLAND. It will be admitted.

Senator SASSER. Thank you.

[The newsstory referred to follows.]

[From the Atlanta Constitution, Dec. 24, 1976]

INTEGRATION CRISIS—BELL CITED AS ONE WHO SAVED SCHOOLS

(By Sam Hopkins)

Griffin Bell, the Jimmy Carter appointee many liberals and the NAACP believe is too conservative to be attorney general, was cited Thursday as a key figure in saving Georgia's public school system back when desegregation threatened to tear it apart.

The praise for Bell came from the elite of Atlanta's black leadership back when many feared public opinion would force the legislature to abolish the school system.

Although it has never been publicized, it was learned that Bell, as Gov. Ernest Vandiver's chief of staff, not only met privately with the black leaders to help preserve racial harmony, but he also conceived the idea of creating what came to be known in 1960 as the Sibley Commission.

The commission, headed by Atlanta attorney John Sibley, held public hearings all over the state on whether Georgia's schools should be kept open if forced by the federal courts to desegregate.

And it was the commission's later recommendation to keep the schools open at all costs that led to the legislature striking Georgia's school segregation laws from the books.

Warren Cochrane, who was executive director of the Atlanta Negro Voters League back when Vandiver went in as governor, recalled blacks meeting with Bell in the law offices of King and Spalding in the Trust Co. of Georgia building.

"Bell was a moderate voice in those meetings," said Cochrane, who was one of the giants in the black community back then. "But that has always been Bell's position. Anybody who says he's anti-black is wrong. He's not."

T. M. Alexander, another highly respected black leader in the 1950's and 1960's, also recalled meeting with Bell.

"It was at a time when it was not too popular for blacks and whites to meet together, especially in downtown offices," Alexander said.

"To me," he added, "it was a breakthrough and laid the groundwork for the Sibley Commission. I think Bell represented a sort of moderate of voice at a time when it wasn't to popular to be moderate."

Alexander further said, "There was a consensus that we would cooperate as long as there was a thorough understanding that we would get in return what we were seeking—and that was complete and total integration of the schools."

The black leaders—and others close to the meetings with Bell—also disclosed the apparent significant, yet unpublicized, role Sen. Herman Talmadge played in arranging meetings between blacks and Bell.

Two close confidants of Talmadge—black undertaker Robert Parks of Cedar-town and W. O. Brooks, once a research assistant for Talmadge and an aide to Gov. Vandiver at the time—met repeatedly with Atlanta's black leaders in an effort to prevent racial flare-ups.

In fact, Talmadge himself, through an intermediary, had a meeting of black leaders at his home in Lovejoy. Gov. Vandiver was there. Among the others present were Cochrane; the late A. T. Walden; the late Dr. Rufus Clements, president of Atlanta University, C. R. Yates, board chairman of black-owned Citizens Trust Bank; L. D. Milton, president of Citizens Trust Bank; and Dr. Harry Richardson, president of Gammon Theological Seminary.

John Calhoun, now a City Councilman, was another black leader back then who recalls his first meeting with Brooks on the Atlanta University campus prior to meeting with Bell.

Brooks, who was later named to the State Pardons and Paroles Board by Gov. Vandiver, is now a high-level official with the State Labor Department.

Brooks declined to comment about what went on 16 or 17 years ago.

Several participants in the numerous meetings back then between black leaders, Bell and others, recalled Vandiver's much-publicized "no, not one" comment he made during his gubernatorial campaign, in reference to his opposition to allowing even one black child go to an all-white school.

"We didn't hold that against him later," said one black.

One reliable source said that both Bell and Brooks had been strongly against Vandiver making such a statement. Bell was reported to have been "alarmed" by it.

"I think two people talked Ernie into making that statement," one source said. "I know who they were, but I'm not going to mention their names."

One official who was close to the mediation talks back during Georgia's school desegregation crisis, commented Thursday:

"I guess Griffin Bell had as much or more to do with a responsible transition in Georgia than any other person. He was one of the key persons in preventing a confrontation between the races. His was a moderate and responsible voice. He was the right man at the right place at the right time. I think there could have been a damned holocaust in Georgia if it hadn't been for people like Griffin Bell during those trying times. The man's been decent for a long, long time."

Bell, who retired as a judge this year from the Fifth U.S. Circuit Court of Appeals after 15 years on the bench, confirmed in an interview that it was he who first thought of such a study group as the Sibley Commission.

"I thought up the Sibley Commission one night sitting at home," he said. "I wrote up the resolution, got Ernie (Gov. Vandiver) to agree to it, and then got George Bushee (who was then a young legislator in the Georgia House of Representatives) to introduce it."

Although he initiated the idea of the commission, he said it very well grew out of the concern both he and blacks had expressed that there must be some way to "educate the public, to change public opinion," about the need for saving the public schools.

Chairman EASTLAND. Senator Mathias?

Senator MATHIAS. Judge, would you put on your chief of staff hat now?

When we concluded yesterday, I had just put into the record a package of legislation which had been offered by the Vandiver administration to the Georgia legislature. That included bills which authorized the Governor to close any public school, in the language of the legislation, "to preserve good order, peace, and dignity of the State."

It authorized the Governor to close units of the Georgia university system.

It authorized the Governor to appoint counsel and compensate counsel for any official sued in State or Federal court.

It lowered the age to 21 for admission to the undergraduate university system and to 25 for graduate school.

It authorized municipalities to levy taxes to support separate schools with the provision that this power would be void if any court ruled that the separation of the races was invalid.

Judge BELL. Is that "separate schools" or "private schools?"

Senator MATHIAS. I think the language was "separate," but I think the implication was "private" schools.

There were some other acts that were passed in 1959—one providing tax credits for contributions to public schools, which is not in the record yet; and an act establishing a commission on constitutional government; and an act authorizing correspondence courses as an alternative to integrated schools.

The last three, I do not have a text of to offer, but I do have a synopsis, Mr. Chairman, which I offer for the record from the Race Relations Reporter.

Chairman EASTLAND. It will be admitted at this point.

[The material referred to was filed with the committee and appears at page 743.]

Senator MATHIAS. Was this the legislative package which the four lawyers appointed by Governor Vandiver, of whom you were one, recommended to the Vandiver administration?

To refresh the committee's recollection of the testimony yesterday, there was a report from the Atlanta Constitution of November 18 that four lawyers, yourself, Mr. Charles Block, M. B. B. Murphy, and Mr. Carter Pitman, had gone to Virginia to make a study. I think you said that you had traveled to some other places.

Judge BELL. Right.

Senator MATHIAS. I might ask you at that point did you go to Maryland?

Judge BELL. No; we did not go to Maryland. I can only remember going to Alabama and Virginia. I keep seeing in the papers, in the clippings we dug out, something about South Carolina, but I cannot remember going to South Carolina. It may be that we just studied their laws. We probably studied all of the laws. We may have even studied Maryland's laws. It has been so long ago.

Senator MATHIAS. We had separated schools in Maryland. We handled that problem without violence. We moved to an integrated system. I am sorry you did not visit Maryland.

Judge BELL. What year did you integrate your schools?

Senator MATHIAS. We had done it by that time. We had moved in that direction by that time.

Judge BELL. Well, you were probably one of the first States then.

Senator MATHIAS. It might have been a good trip for you to have made.

Judge BELL. By hindsight, probably I should have gone to Maryland.

Senator MATHIAS. We would have welcomed you.

Were these bills the package which the group of four lawyers recommended?

Judge BELL. Not all of them.

Senator MATHIAS. Could you tell us which you did recommend?

Judge BELL. I assume where you say the Governor could close the schools, that must be the bill where we were going to reduce from a system to a separate school.

Senator MATHIAS. I do not want to raise the question of S. 1 again, although I take the opportunity to recommend the new S. 1 to the members of the committee, but this was S. 1 in the——

Judge BELL. I know that is one we recommended.

I cannot remember the others. I remember discussion about the lawyers because these little small school districts would not have the money and they would want somebody to pay the lawyers. Somebody had to pay the lawyers if they were going to litigate.

I do not know if that was anything we recommended. That was just something that was going on at that time.

We may have recommended the University of Georgia statute.

We may have recommended the tax credits. That sounds reasonable.

I cannot remember anything at all about correspondence courses. I cannot believe I had anything to do with that.

The taxes for private schools may have been one.

I do not remember anything about the age limits. It sounds like the age limits were some sort of a gimmick to keep—you see, the NAACP

at that time would have a hard time finding somebody to apply to the University of Georgia. This must have been some sort of a gimmick to bar some particular person.

Judge Ward in Atlanta, for example, applied to the Georgia law school. He was thwarted for 3 or 4 years by keeping the case in court. I had nothing to do with that, but it was done. He finally graduated from Northwestern University Law School while the litigation was going on about his getting into the University of Georgia.

So this could have had something to do with that type of thing.

I do not remember having anything to do with that particular bill.

The one that I am clear on was the one going down to one school, and I believe we may have had something to do with the University of Georgia.

As I tried to make clear yesterday, Georgia was in turmoil. We had 205 members of the house, 54 senators. They were dedicated to segregated schools and closing the school system. Everybody was getting up ideas about what to do with these things. Everybody in Georgia was sort of reconstituted into being constitutional lawyers. They all had answers to these sort of things. It was sort of chaotic.

I do not want you to think that I am denying that the four lawyers got up some of these bills. I just don't know which ones we got up. That is what we were asked to do. I did the best I could in the representation that I had assumed.

I do not think that whatever I did made matters worse than they were. If anything, it improved the situation. I hope that is the way I am judged.

Senator MATHIAS. You referred yesterday to some correspondence that you had and to some records. Would that throw some light on the history of this period?

Judge BELL. No.

What I have been able to find would not throw any light. It would be fragmented.

I found one letter that I wrote to the Governor on behalf of the lawyers' committee. It was in the nature of an opinion, but it did not throw any light on any thing except that one particular trip.

The rest of it was copies of bills. I found copies of some bills that you referred to in my file, but I do not know how they got there. I cannot remember drawing them. I assume people were sending things like that to the lawyers. I was getting copies of them.

The one thing in the file that would show anything was one letter in the nature of an opinion from a lawyer to a client.

That is about this one time.

I cannot find anything in the file about the Sibley Commission other than a draft of it. I think I probably handled that by meeting and talking. A lot of this time you would be having meetings and talking.

I remember a good deal about the Sibley Commission and how it was enacted, how we set it up by resolution. I know who I went to see to get to sponsor it. It is the present Governor of Georgia, Governor Busbee. He was a young legislator. He was willing to sponsor it.

Senator MATHIAS. Do you consider that letter to be a privileged communication between lawyer and client?

Judge BELL. I do to the extent that that is exactly what it is; but if you want to get it from Governor Vandiver and if it is in the

State archives, you are welcome to get it. I would not want to give it myself. I do not think a lawyer ought to do that. It might be in the State archives. I do not know where Governor Vandiver's papers are. He might make it available. I do not believe as a lawyer I would have a right to do it.

Senator MATHIAS. You talked of the context of the times. I think that is important as an element.

As we all remember, it was in May of 1954 that the *Brown* case was decided in which the court held that the official segregation of schoolchildren in public schools denied them the equal protection of the law in violation of the 14th amendment.

The court said in that case that we conclude that in the field of public education that the doctrine of separate but equal has no place.

Of course, the order which followed that opinion required the lower courts to make a prompt and reasonable start toward full compliance.

So that is part of the context of the times.

I assume that what was of immediate concern to the court was the decision in *Cooper v. Aren*, which had been handed down just prior to this period. Am I right?

Judge BELL. I think October 1958.

Senator MATHIAS. Yes; it was September 29, to be precise.

Judge BELL. I am sorry.

Senator MATHIAS. In that case the court said that it was made plain that "the delay in any guise in order to deny the constitutional rights of Negro children could not be countenanced and that only a prompt start, diligently and earnestly pursued, to eliminate racial segregation from the public schools could constitute good faith compliance.

"State authorities were thus bound to devote every effort toward initiating desegregation, bringing about elimination of racial discrimination in the public school system."

So that was the context.

The order of the court or the opinion of the court in *Cooper v. Aren* was very clear.

Judge BELL. It certainly was. That is what provoked all of this activity.

We had the "rock and the hard place." We had a man who had just been elected Governor who said he would never have desegregated schools and the Supreme Court had just said that you will. That is what started all of this.

Maryland was, no doubt, a tranquil place, but when the 1954 decision was decided in Georgia, all the people running for Governor tried to outdo each other on who would be the most defiant of the Supreme Court.

The winner was a man who said he would go to Fulton Tower. That is a jail. He said he would be honored to be put in the Fulton Tower to show that the schools would never be integrated in Georgia.

This is 4 years later. The same political climate is going on. There were a lot of people in Georgia who wanted to save the public school system. Some moderation was setting in. Forces were building up.

That was the time. All of that is the time.

If the Supreme Court had not put in the *Brown* decision that you had to do this with "all deliberate speed," it would have been like

any other court order. It would have been carried out long before it was.

But when you get that language "all deliberate speed" and you have people who are in control of the vote—bear in mind that the blacks did not have a right to vote then except in the urban areas in Georgia, in Atlanta and a few other large cities.

The people in power did not want to integrate the schools. The masses of the people did not want to do it. They had this umbrella to get under: "all deliberate speed."

When *Cooper v. Aren* came along, it was obvious something had to be done pretty fast, but it was 10 more years before the South finally desegregated. They finally desegregated in the cases that the chairman knows about, the 30 cases I had in Mississippi where the Supreme Court said, "You have to desegregate these schools at once," and they were desegregated in 6 weeks.

That was the first time that it had ever been put to the courts or to the South cold turkey, that they had to do it at once. It was done.

It took a long time. I remember Senator Russell said after the *Brown* decision that it would take 25 years to desegregate the schools in the South. Well, it took 15 years. That is what it took.

In other parts of the country, I don't know about Maryland, the schools never have been desegregated: but they did not have segregation required by law, which, of course, is a thing which is another subject.

Senator MATHIAS. Feelings were not all that calm in Maryland either at that time. I am proud to say we had a Governor at that time, I respect his memory, Theodore Roosevelt McKeldin, and just by chance he was a Republican.

Judge BELL. Do you think that made all the difference?

[Laughter.]

Senator MATHIAS. But when this court order was issued, he said, "We will obey the law." I think that is what made the difference in Maryland. It was leadership.

Judge BELL. I am sure it did.

Senator MATHIAS. He said, "We will obey the law."

Judge BELL. He did not want to go to the Fulton Tower. That is the difference. You were lucky that you had a Governor like that.

What we did in Georgia—some people do agree with me. I think—we did the best we could under the circumstances.

I do not want you to think that I was out making speeches that we wanted to integrate the schools. I did not make any speeches that I can recollect. But, in my own way, I thought I was doing pretty good.

Chairman EASTLAND. Your time has expired.

Senator MATHIAS. Our chairman has lowered the boom on me.

Chairman EASTMAN. Senator Bayh?

Senator BAYH. Judge Bell, I was looking at the record last night. I would like to perhaps get a little refinement or touch on a couple of issues that were brought up in our give and take yesterday where I had intended to ask questions and did not.

We got into an extended, and I thought satisfactory, discussion of the whole area of equality for women as well as minorities.

We now have one constitutional amendment out in the field. Probably at this very hour it is being voted on in the Indiana House of Representatives. I hope it is voted on favorably.

You express support for that amendment. There are laws that need to be strengthened, but it seems to me that, despite all of this, even if we passed the equal rights amendment and it becomes the 27th amendment of the Constitution, one of the most important, in fact, I think the most important area that will lead to results for women and minorities is to enforce the laws that we have on the books.

It has been a very frustrating experience for me in dealing with certain officials in this last administration too, in essence, see the enforcement procedures come to a standstill. The claim is that the caseload is great. It is great. But in several instances in various departments slots are vacant which are not now filled in the enforcement area.

I happen to know as a member of the Appropriations Committee that no requests have been made, despite suggestions that I made, in a special hearing right in this room, that such request be made if the laws were not being enforced because of lack of facilities, because of lack of personnel or resources. Ask for what you need, and the Congress will give you the money to enforce these laws to see that the rights of American citizens are protected.

It seems to me that makes a lot more sense than passing a whole bunch of new laws.

I just would like to get your feeling as Attorney General; in your relationship with this committee, as well as the Appropriations Committee, would you pledge to make sufficient requests to have the personnel necessary to strengthen your enforcement arm down there at Justice, to enforce the rights through the laws which are now on the books?

Judge BELL. We will. I will pledge that.

Senator BAYH. I think that is critical.

Judge BELL. I think it is also critical to the country that we not have laws that we do not carry out.

If we have bad laws, they ought to be repealed. If they are on the books, they ought to be enforced.

So if you will give me a memorandum about some of the areas you have in mind, I will be glad to see it.

Senator BAYH. I would be glad to do that. I do not think it is necessary to get into details. I know you would not make your general pledge if you did not mean to fulfill it.

Right now there is a contest between the women who want their rights protected, on one hand, and minority groups who want their rights protected, on the other.

People in the administration are making a trade-off that they are going to use limited resource—just enforce one group or some here and some there.

It seems to me we should not have a situation where groups of Americans who are denied equal opportunity are vying for their day in court, so to speak.

I will be glad to submit a memorandum like that to you.

Judge BELL. I can tell you that if you will visit with the Mexican Americans, you will have a third group who think they are not getting their rights.

Senator BAYH. That was one of the minority groups that I have been considering. That is certainly very important.

We discussed yesterday the responsibility that you will have in the battle against crime. You seem to share my conviction that we need to emphasize preventative techniques and programs and that the Juvenile Justice Act holds a great deal of merit with early attention to children's problems.

Let me bring to your attention, so that you might for the record give us your thoughts on this: Our committee has given special attention to the problems of vandalism and violence in our public schools where hundreds of millions of dollars are wasted needlessly that could be better used in positive educational programs.

The present Office of Juvenile Justice is in the process of commencing, in conjunction with the Office of Education of HEW, a special pilot program which will, I think, have 80 communities.

There will be a joint effort between school officials, teachers, parents, children, law enforcement officials, and community leaders to try to really concentrate on this area.

In fact, I think in the next week or two the NEA is holding its special convention giving special attention to this.

I just would like to get your opinion as to whether this kind of program should be pursued until we see whether special attention might deal with that problem which is very critical where the halls or many of our classrooms really are not safe for teachers or students.

Judge BELL. That is the most critical problem there is in public education.

Wherever you will go, you will find that this is a problem. It is not only in violence; it is also other forms of disorder. It is impeding education.

All school teachers and school administrators will say this.

It is a problem that has to be dealt with. It has to be brought under control.

I do not know of anybody, any citizen, who is not in favor of doing this.

It is like so many other things—nobody is doing anything about it. We are going to get started.

Senator BAYH. You would be willing to proceed to see if you can find an answer?

Judge BELL. Yes.

I would want to look for an answer. This is something I would be pledged to do.

I have made speeches on this subject to school groups.

It is a serious problem in America.

Senator BAYH. Thank you very much.

I happen to have had the privilege to have been this committee's representative on the Select Committee on Intelligence.

There have been questions directed at you in this area. I would like to expand those questions a bit, so that that select committee, which

is going to have to work closely with you as we have your predecessor, will have the benefit of your knowledge now.

I wonder how we can balance the U.S. need to know information to protect all of our citizens and to protect our country, on one hand, with the rights of individual American citizens to have their rights protected, on the other hand.

There are about three general areas that we are considering right now.

You have discussed, I think, rather fully at least part of the first area, which involves the Presidential use of authority under the national security guides where, really, the Supreme Court has left a vacuum.

They have spoken rather eloquently and specifically, as we have discussed here, in the area of domestic surveillance; but they have left open the area of the national security question.

There are two cases which you know very well: the case that you have written in *Brown* and the *Zwibon* case, which takes a contrary point of view.

Early before the committee I think you said that your views had changed on this in light of what has happened subsequent to the *Brown* decision.

I would just like to ask you to consider that we are talking about legislation to protect individual rights. So far our discussion has been confined almost completely to electronic surveillance. I would like you to give your thoughts as to whether, perhaps, we should also include in this other violations of individual rights, which are also in the province of intelligence gathering, such as mail openings, entries, illegal or surreptitious searches, and this kind of thing.

Judge BELL. I think they ought to be included under the warrant procedure.

Senator BAYH. I am glad to hear you say that.

As I recall, you have said that you will assist Congress in passing legislation which will provide the guidelines for President to protect the rights of individual citizens.

Judge BELL. Right.

I think if you are going to open somebody's mail, there is no reason why you cannot get an order through the Federal court that you would get to surveil.

Senator BAYH. I feel very strongly about this.

You said you would trust the Federal judges to make this decision. Frankly, I would, too.

I understand that there is a counter thought that the President has the right. I cannot answer that question. The Supreme Court, despite all of our pronouncements, is going to decide that.

Judge BELL. Going back to what I said to Senator Abourezk, I think there can be an accommodation.

Of course we want to protect the country, protect society; at the same time, I think we can protect the individual rights.

Senator BAYH. Another field that has not been discussed here is the responsibility that is presently being undertaken by the Intelligence Committee to establish charters for the various intelligence gathering agencies.

There are the guidelines for informers. There is the basic effort to try to determine what the limits of the authority of the different agencies are. There is the question of what tools can be used and under what circumstances. There are the general charter provisions for each of the intelligence gathering agencies.

Would you support that kind of effort?

Judge BELL. I would.

One problem the FBI has is that they have not had a clear charter. I think it is important, though, not to get into too much detail on a charter. I think you have to have a combination of charter and guidelines.

Attorney General Levi has been working on guidelines. I think if we can fit those in with a charter, you are on the right track. I think it might help some other agencies besides the FBI to have a clear charter.

Senator BAYH. We are talking about all of the intelligence gathering agencies. Unfortunately, few of them have been free from abuse. That is past history. The question is how we deal with it in the future, which leads to the third area that I would like to get your opinion on.

There has been a great deal of criticism directed at the executive branch, which I think is certainly well founded, and the intelligence gathering agencies themselves, which are part of the executive branch.

I do not think we can, in all honesty, as Members of the Congress, say that we were not at least partially to blame because we did have an oversight committee which was not functioning for various reasons. There is no need to go into those.

Senate Resolution 400 establishing the select committee certainly determined that the Congress should reassert itself. We should perform an oversight function.

If we are going to make this oversight function, we are going to have communication.

It seems to me this also has to be established through a procedural structure, so that there can be an ongoing, continual communication between the agencies and the select committee.

We are in the process of trying to put this together. In fact, the chairman and vice chairman of the select committee have written to the Justice Department asking them to respond and help in the structuring of this procedure. So far there has not been an answer forthcoming.

I would like to ask you, sir, if, when you get in the seat down there, will you look at that letter, will you give us an answer, and will you help us put together the formalized kind of reporting-communications system that will make oversight meaningful?

Judge BELL. I will.

Senator BAYH. I appreciate that because I think it is important.

The last area, which I think you have spoken to earlier, if not in this hearing, at least to some of us personally, and I think really the most important, is that the control or check on these various intelligence gathering agencies should be an Attorney General who will be determined to put himself in a position where he is not going to let these agencies, with all good intentions, run helter-skelter out of hand pursuing goals which they feel are in the best interests of

their particular mission, but which indeed violate the rights of individual American citizens.

Could you tell us briefly what role you feel that you as Attorney General should play to protect the rights of individual Americans on one hand and, at the same time, provide reasonable opportunity for intelligence gathering agencies to do their job?

Judge BELL. I am much impressed with the job that Attorney General Levi has done in this area. I plan to pursue the same policy he has. That is to spend a good portion of my time on these matters and proceed with extreme caution and care whenever there is some effort or attempt to request to surveil.

Senator BAYH. I think you play a critical role there.

Judge BELL. I think I have learned that from talking to Attorney General Levi. The Attorney General is the key in this area.

Senator BAYH. I certainly share that belief. That is why I asked the question for the record.

Let me move into another area, if I might.

During the campaign period, Governor Carter expressed concern in a couple of areas which I feel are important.

Many of us on this committee have played a significant role in this.

One involves the consumer class action area in which Governor Carter mentioned that he would like to see, and I quote, "I would like to see legislation passed to overthrow the Supreme Court rulings that in the past have blocked consumer actions."

He then went on to refer to the present limitation of \$10,000 damages which must be suffered individually by any one member before they can bring an action and also the very strict notification provision.

In one case, as I recall, the court ruled that you had to inform 21½ million stockholders before a class action suit could be pursued.

Do you have any suggestions as to how we can do what Governor Carter, now President-elect Carter, soon-to-be President Carter, wants to do, and which many of us in this Congress would like to see done, to protect the rights of individual consumers to sue?

Judge BELL. I have been criticized for a speech I made at the Pound Conference in St. Paul because I said that we ought to have an opt-in procedure in class actions rather than the present opt-out system.

I think that is widely misunderstood because it is probably misunderstood by people who do not understand the class action procedure.

Most class actions go out. That is through failure of the district court to certify the case as a class action.

They do it on manageability. The court will conclude that the case is not manageable.

For example, there was a case in the ninth circuit where the ninth circuit decided it would take 242 years to try the case if they gave every plaintiff 10 minutes apiece to prove his damages.

It is not helping anybody to file a class action that is so big that it cannot survive in court.

If you opt-in, you cut down the class. That also cures a lot of the problems of notice in the *Eisen* case that you have in mind.

I do not favor what a lot of people favor—that is, to make every class action an opt-in.

I would do it within the discretion of the district court. Whatever the district court thinks that would enable them to handle a case, I would give them that discretion to do that.

On aggregation of claims to get jurisdictional amounts, the Supreme Court has held that under the Federal rules you cannot aggregate. They have never said that Congress could not change the jurisdictional statute.

Now there are only two kinds of jurisdiction. That is, diversity and the Federal question jurisdiction where you have to have \$10,000.

Congress could legislate on that. It might be worth doing to help to give people access to the courts.

Most of these consumer suits are coming under a special statute where the court has jurisdiction anyway.

There are some problems in this area but they are not great.

The greatest one, I think, is on bringing a lawsuit that is of a size that it can be processed through the courts within a reasonable time. If we take that as our target or our goal, work toward that, we will help a lot of people.

Senator BAYH. So would you work with us to try to meet that goal, so we can make consumer action more effective?

Judge BELL. Yes, I would.

Chairman EASTLAND. Your time is up.

Senator Heinz?

Senator HEINZ. Judge Bell, I would like to clarify in my own mind your views on the role you played when you were chief of staff in Governor Vandiver's administration.

I guess I can best focus our thinking on that question by asking you whether the Griffin Bell who served as chief of staff to the Governor is the same Griffin Bell who sits before us here today.

Have your views on race relations changed over the past 18 years? Today do you acknowledge that you, back then, were somewhat less sympathetic to the need for equality than you are today?

Or is it your contention that you have always been sympathetic to the civil rights movement and that your activities as chief of staff are reflective of that sympathy?

Another way of asking that question, I suppose, is to say: Do you have any regrets about your participation in the Vandiver administration?

Judge BELL. Well, that is a long question. I will start backwards and take the last thing you asked first.

I do not have any regrets about my participation in the Vandiver administration. I think I made a valuable contribution in the time that I was in. I think I was a moderate when there were not many moderates. I think I, maybe more than any other person, kept the school system open.

That does not mean that my views about discrimination, whatever kind of discrimination, have not changed. I hope I have grown some. I am older. I have been in 3,000 Federal cases. I do not know of anyone who has been in as many civil rights cases as I have been in. If I have not grown—well, I have grown. Nobody could go through what I have been through since then without growing a lot. I expect I know as much constitutional law as most anyone in this area.

I have made many speeches on the need for the full implementation of the equal protection laws.

I have had an opportunity to grow through learning and through being where the action was going on.

Somebody else could judge me better than I can judge myself on this, but I know I am a much broader person than I was when I was younger.

But I do not want to say that what I did during the Vandiver administration was some sort of a crime that I committed or that I have to admit some kind of a guilt.

In the time that I lived in then, I did something worthwhile. I did something a moderate person would have done.

Since then, I have done the same thing. I do not have any worry. I expect that my attitude on sharing power and letting everyone into the system is one that can be demonstrated, whereas most people have never had the chance to prove what they can do.

Most people that you would have here examining would be somebody that you would take a guess on. I have a record, a proven, written record. Whether it is good or bad, I do have a record.

I think it shows that I am a person who believes in civil rights, constitutional rights, the Bill of Rights, and I am also a person who has demonstrated he knows how to carry out the law and enforce the law.

Senator HEINZ. Would it be fair to summarize what you have said by saying that you do not characterize yourself in the late 1950's as a person insensitive to the civil rights movements, but you also would say, by virtue of your services as judge, that you have grown more sensitive? Is that an accurate characterization of what you are saying?

Judge BELL. I think that is accurate. I was not young then, but I was much younger. I was called on as a lawyer to do something. I did it.

Everybody insists on using the term "chief of staff," but I say it was an honorary thing. Nevertheless, I had that title. I was thrown into something I had never been in before. Most lawyers my age would have never been in that. It just happened that I turned out on what I think is the right side. That was operating out of maybe an ignorance. If I did something wrong now, you could not charge it to ignorance because I have been through the mill. I have been through every kind of case you can be in.

Senator HEINZ. This is an important question because as Attorney General you obviously will be in a different position than that as a judge. You will be deciding what actions to bring to enforce our civil rights laws. Therefore, it is very important, it seems to me, that the committee have a clear idea of how aggressive you will be in enforcing our Nation's civil rights laws.

You mentioned your record. In the course of your service on the Federal bench you have ruled on discrimination in the distribution of public services.

In reviewing some of your opinions, it seems to me that you have been a strict constructionist as far as defining discrimination is concerned. You stated, and correct me if I am wrong, that in one of your decisions, "Plaintiff must prove overt bias before their claims are actionable in court."

In these same cases, however, your colleagues on the fifth circuit have said that discrimination should be judged in its effects, not by the intention of the accused.

You were somewhat on the other side. You said that the intentions of the accused were quite important in defining whether discrimination, in fact, did exist.

My question to you, therefore, is, as Attorney General, will your decision on whether to prosecute in civil rights cases be determined by the definition you used as a judge? If not, how will you define discrimination? How broadly or narrowly will you define it? What will be your views of the question of intentions versus effects where discrimination is concerned?

Judge BELL. Well, would you mind giving me the name of the case you are reading from?

Senator HEINZ. The Jackson, Miss., swimming pool decision.

Judge Bell. If I am not mistaken, what I said there, and I do not know if I was in the majority or in dissent, but what I said there is now the law by virtue of what the Supreme Court has held. You have to show intent in most instances now.

So whether I was in the majority or in dissent at that time, that has now become the law.

I am not trying to be technical about it.

As I told Senator Kennedy yesterday in answer to a question, you cannot find anybody for Attorney General who has already enforced the law as much as I have. I am a law enforcer.

I have desegregated schools. I have put a school system in receivership once.

The only criminal contempt on a labor order case—I tried the State court clerk in Mississippi a week for not letting a black register to vote.

All I can say to you is if you can find—I do not think you can find anybody else who has a record like that. I enforce the law. I understand the law. I understand civil rights and constitutional rights. I think I have an appreciation for rights.

Senator HEINZ. There is no question in my mind that you—but I am asking you a question relating to how you will act as Attorney General, not as a judge.

My question specifically was directed at your definition of discrimination.

You will take action on civil rights laws when you see there is discrimination?

Just so you are clear on my question, my question is: All right, if that is the trigger of the intervention of the Justice Department in a case, then what is your definition?

Judge BELL. You cannot see intent. You have to prove intent. You see a result. That is where you start.

If you see something that looks like it is discriminatory, then you start out to investigate it.

I am not trying to be humorous, but Justice Stewart said that somebody commented that they could not define obscenity, and he said: "Well, you cannot define it, but you know it when you see it."

That would be discrimination. Most of the time you know it when you see it. You look at the effects, at the result, and then you start from there to see if there is real discrimination, and then you have a case.

Senator HEINZ. Do you believe that in starting a civil rights action of some kind that you must allege intention?

Judge BELL. It goes to what sort of a case it is.

This is even too technical for me. There are some cases where you have to show, in some school cases the Supreme Court has said that you have to show segregatory intent. That is something you have to prove. That is in a de facto school system and not de jure.

If you can show that the school board operated with a segregatory intent, then you make them desegregate that school or that district. That is something new that has come on the scene.

The Jackson swimming pool case was a long time ago. I cannot remember what was in it. I don't think I wrote that opinion. I may have concurred in it. I do remember the Supreme Court affirmed it.

The best answer I can give you is that, if you see a place where there are no minorities employed, or no minorities in the schools, or where there seems to be some exclusion going on, then that would alert you to the fact that something may be wrong. That is where you start.

I would not be technical about it. You do not get anywhere in life by being too technical anyway. We want to get results. We are after results.

Senator HEINZ. Let me ask you a question in a different area regarding antitrust enforcement.

You know, today a thief, if he is caught, can go to jail for 2, 3, 4, 5 years under State law.

Until recently, if a price fixer was caught, it was a slap on the wrist and a maximum of 1 year. It was a misdemeanor, not a felony.

That law, of course, has been changed. There is, I understand, an effort in the final days of this administration to try and really use the new authority effectively.

My question to you is this: In the case of price fixing, that kind of white-collar crime where you can talk about somebody who has stolen \$100 million from the public by price fixing, will you seek strong penalties, maximum penalties, against price fixers?

Judge BELL. I not only will seek them, I will go to court myself at the time of the sentencing to ask the court to impose severe sanctions.

I have said that publicly.

I think that the greatest service we can do for the free enterprise system is to prosecute the price fixers.

Most businessmen are honest. They are not engaged in price fixing. It harms the system which I believe in to condone price fixing.

So I will not condone. I will do my best to go get something done about it.

Senator HEINZ. So any dishonest businessmen had better know that, if you become Attorney General, he is facing 3 years in jail and \$500,000 or \$1 million worth of fines?

Judge BELL. Whatever the judge would give him, but I would be there asking for a heavy sentence.

I think if he gives them heavy sentences, the price fixing would come to an end.

Senator HEINZ. I think that is the right attitude. I commend you on that attitude.

I do not know if I will have enough time, Mr. Chairman, to get into another line of inquiry, so I will reserve that until another opportunity.

I would like to follow up on one question discussed yesterday involving the 14th amendment.

We talked about sex discrimination and your views on the equal rights amendment.

My question goes to age discrimination. The Supreme Court has ruled that age is not a constitutionally suspect classification under the 14th amendment.

Do you think Congress ought to pass legislation outlawing discrimination on the basis of age in employment and other fields?

Judge BELL. Congress has already legislated to some extent in the field of age discrimination. There are many cases pending in court now under that statute.

I am not saying how broad it is. I would be glad to look at it again.

That is an active area right now. There are a good number of cases pending in the district court in Atlanta on the Age Act, as we call it. There are some interlocutory appeals that have been allowed to the fifth circuit to pass on some of the questions which are unresolved as to whether you are entitled to a jury trial and that sort of thing. They are pending now.

Chairman EASTLAND. Your time is up.

Senator KENNEDY. I apologize for not being here when you covered a number of areas that I am interested in. I had to be at some other committee meetings this morning.

You are quite correct that the legislation which exists on the books at the present time under the Older Americans Act is quite clearly a legislative mandate to prohibit discrimination on the basis of age.

I think all of us have seen, particularly some of the States with older populations—mine included—that that has not been an area where the Department has been strong in pursuing enforcement.

The Congress has spoken on that issue. I certainly welcome the opportunity to have your strong support in working in that area.

If I could, Judge Bell, let me ask you what your current intention is regarding the Director of the FBI—do you intend to reappoint Mr. Kelly? Do you intend to replace him? Have you given thought what the administration's position would be?

I would also like to ask a followup question in terms of what you think the priorities of the FBI ought to be in terms of a new administration. Have you given thought to that?

We have seen what I think generally has been the perversion of FBI authority and power in some important areas.

I would be interested in what your views are, both with regard to the Director as well as what you think ought to be the priorities of the Bureau in carrying forward its responsibilities.

Judge BELL. With regard to the Director, as you know, he is serving under a 10-year term and can be removed for cause. The legislative history is not too clear on what cause is.

I have met with Director Kelly. He is 64 years old. He is a Director at a time when many of the top people in the Bureau will be retiring over the next year or so.

We have had a very good meeting. He wants to assist in the transition which will have to come because of his age and the retirements in the management of the FBI.

I do not know whether we will come to the point where Director Kelly would do anything more than at some appropriate time ask that he be permitted to assist in the transition period.

So I think we will look forward to having a new Director of the FBI before too long. That is the way I see it now. This is after having met with him and having talked with him.

With regard to the resources—

Senator KENNEDY. Let me be somewhat more specific.

I know there are a number of factors which you have commented on. Can you give us any sort of general time frame as to when you feel a transition would take place?

Judge BELL. The change in Directors?

Senator KENNEDY. Yes.

Judge BELL. I cannot give you a time frame.

As I have been interviewing people for deputy, and I have interviewed a number for solicitor general and other positions in the Department, I have been also thinking about these people as to how they would fit in as Director. So there are other people to be interviewed.

As soon as I can get on the job—in fact, I have told Director Kelly that one of the first things I want to do is to have a meeting indepth with him on some of the FBI problems.

So I would not want to give a time frame. It would not be long.

Senator KENNEDY. On the second question, in terms of priorities of the FBI, have you given thought to urging greater effort by the FBI in areas of white collar crime and organized crime and Government corruption as distinct from car thefts and other crimes?

Judge BELL. I have given a good deal of thought to that and I plan to upgrade the activities and escalate the activities into more difficult investigative areas. That would include white collar crime and price fixing.

I would leave as much as we can to the State forces in the stolen automobile areas and that sort of thing.

Director Kelly and I have talked about that.

Let me say about Director Kelly that he has made some improvement in this area. He has already made some changes. He is on top of that problem but we will want to expand what he has been doing.

Senator KENNEDY. What kind—how do you view the current threat of organized crime in the country? How significant is it and how pervasive and how powerful and how important is it in terms of your priorities?

You talked on this briefly in responding to a question yesterday, but I would be interested in your views on this.

Judge BELL. We have had very little organized crime in Atlanta. We have some. We have not had anything of the so-called mafia, as maybe some other parts of the country have.

I think organized crime has gotten so big that it is almost like a government itself. It obeys such laws as it wishes to obey. It seems to have unlimited resources.

There is a very grave problem in the country I think.

It has another side effect, and that is that we condone local organized crime sometimes just by virtue of the fact that we are glad we do not have some nationwide type of organized crime. That is bad.

So I think it is entitled to a high priority; that is, bringing organized crime under control. I think it is a very difficult thing to do. I think it is something the FBI needs to direct its efforts to.

Senator KENNEDY. Could I turn your attention to the issue of gun control?

What general comments would you make on that issue?

Judge BELL. I have long thought that we ought to have handgun control as distinguished from sportsmen's weapons.

We do not seem to be making as much progress in that area as we should. We probably should have some national programs with leadership that would let the handgun control be administered on a local level. That encourages States to get into this activity through some Federal process and maybe even cities.

It would take a monstrous bureaucracy just to administer a handgun law if we start to do it on a national level. But I think we can do it by getting the States to do it.

I think we are past time having a handgun control.

Many of the cities already have it, as you know. States do, too. But we need to get a national policy on this.

Senator KENNEDY. Would you be willing to work with us on this committee, with Senator Bayh and myself and others on this committee who have been interested in this question of handguns?

I think particularly of the area of the Saturday night specials.

I must say that over the period of the recent past we have had very little cooperation by administrations in trying to work out a sensible and responsible policy on this.

I think it would be very reassuring to know that you would be willing to work with us in this area.

Judge BELL. What I stated is the promise of Governor Carter. That is essentially what I have said.

So I think we will have good cooperation on this.

Senator KENNEDY. Another areas that this committee is very interested in is the Freedom of Information Act.

I know the President-elect has committed the administration to a strong policy of openness. I also realize there are special needs for the Justice Department with the privacy rights tied up in law enforcement inquiries and the need to seek secrecy in investigations.

The Attorney General can still play the key role in the administration of the whole issue of openness in Government.

I do not know whether you have given any thought to any specific plans regarding openness in your decisionmaking process or in complying with the Freedom of Information Act or the requirement of Department officials to keep logs of outside contacts or the like.

I think it would be very reassuring to know that this is a matter that you would be interested in and working on.

Some of the regulatory agencies do extremely well on it. They have logging provisions.

The Consumer Products Safety Commission does this and there are others.

I would be interested in whether in carrying forth President-elect Carter's commitment on openness we could look to you for some leadership in this area.

Judge BELL. You could. I plan to carry it forward.

I told Senator Mathias earlier that I plan to have a logging system not only to comply with the Freedom of Information Act but as a matter of self preservation.

Senator KENNEDY. We understand that you will have it.

Judge BELL. And throughout the Justice Department, not just me.

Senator KENNEDY. That is very reassuring.

I hope that example will be replicated by the other agencies. Some do, but many do not.

I think that would be very reassuring.

I do not think any of us are expecting something that is going to be so laborous and such a burden as to be unworkable, but there are important examples of how it is working in agencies of Government now. I think that is important.

I am interested in the issue of the access to the courts in class actions.

I know you commented just briefly on this in response to some of the other questions.

Some critics have said that recent Supreme Court decisions have unduly limited or foreclosed access to the Federal court, I am talking here about those decisions related to standing, the eastern Kentucky welfare rights case in class actions and the civil rights cases, the Rizzo case, habeas corpus cases.

I do not know whether you have had a chance to give thought about what the need might be for fashioning legislation on these topics or what views you might have in terms of access to the courts, particularly, I think, by people who are poor, elderly, and needy who are attempting to assure that their rights are going to be carried forward.

Judge BELL. I do not know all of those cases, but the Snyder case is an aggregation —

Senator KENNEDY. I am really interested, Judge Bell, in a general kind of comment on it rather than the specific references.

Judge BELL. I believe in the law being a workable institution. I know a lot about class actions. I will be working to give people access to the courts. I believe in that, but within a frame of having the courts handle those matters that they can successfully handle. That is the way I would go about it. That would not keep anybody out.

It might be that instead of having 2 million, the class action might end up with 100,000 in the class; but under my system you would file and you would get a judgment rather than having something just in the courts that everybody is talking about but nothing ever is happening.

Senator KENNEDY. What I am driving at is whether, in the general public recognition of the overloading of the courts, we are going to preclude some rights for individuals, class actions, which should have access to the courts.

I think we want, at least I would hope, to insure that in our concern about overloading the courts, we insist and insure that individuals

and class groups, particularly the needy, are still going to have access to the courts.

We will want to work with you in this area.

Judge BELL. I have been working in the area of providing access to the courts. I call it delivery of justice. That is the same thing.

Senator KENNEDY. In a more particular area, as you know, in the Alyeska case, it said that the courts do not have broad equitable discretion to award attorney's fees in the absence of legislation or authorization.

We have now a number of the regulatory agencies which permit the awarding of attorney fees under very specific guidelines and requirements—that it has been in the public interest, that the issues they are raising are broad context, and that the individual or individual group they are representing do not have the financial ability to raise these particular issues.

The Federal Trade Commission and other agencies have been willing to provide attorney's fees, and the courts have in some instances. I would be interested in whether you believe that the Congress should continue to authorize attorney's fees in cases where the promotion of the litigation is to secure rights under a private Attorney General theory, as the objective of the bill?

Judge BELL. Before the Alyeska case was decided, there were many awards of attorney's fees under the private attorney general theory, many in the fifth circuit.

Also there was another way of doing it. That was where you could show bad faith.

I think there are many cases where the case could not be brought unless you made some provision for attorney's fees. I think it is in the national interest to do that.

You have to be careful to draw a line between cases that are generated for the benefit of the lawyer rather than the class. That is the only demurrer that I would add.

Senator KENNEDY. On this issue, where we can establish very strict legislative requirements to provide protection against that kind of abuse of attorney's promoting their own interest, but under strict requirements regarding need; the importance of the case in terms of public policy; and the importance raising issues which would not otherwise be raised.

You are aware of the importance of providing the fees in those areas?

Judge BELL. I am.

Senator KENNEDY. Thank you very much.

Chairman EASTLAND. We will recess until 2 o'clock.

[Recess taken.]

AFTERNOON SESSION

Chairman EASTLAND. The committee will come to order.

Senator Abourezk?

Senator ABOUTREZK. Mr. Bell, during the period of time I had this morning we discussed in kind of a brief way the question of national security wiretapping. I think, to summarize, you agreed that we ought

not to touch in legislation the question of whatever constitutional powers the President might have. That ought to be left as it is, without trying to interfere with it.

In that legislation that was offered last year, most of the areas covered, so far as national security wiretapping, involved allegations or the showing of probable cause of a crime about to be committed or in the process of commission before a warrant can be obtained.

There was one area that did not require the allegation of a crime for a warrant to be obtained under that provision. That was if the Attorney General or the President believed that intelligence gathering per se was necessary to wiretap or to conduct some kind of electronic surveillance, that no crime need be alleged.

That was a kind of a sore point with many of us who wanted to sponsor this sort of a bill. During the questioning of Attorney General Levi, his responses generally came down on the side: well, we cannot give you many examples of where we would need to wiretap when no crime is being committed or one is not being alleged; however, there is certain to be something that will come up.

Our response, then, to the Attorney General was this: why not, if you can think of an example, make that a crime so that it will fall under the provisions; so we do not have that little bit of an area of total freedom on the part of the President and the Attorney General to wiretap the American citizen.

My question now to you is this: Do you believe that that provision ought to be included in any national security wiretap law? By "that provision" I mean that there must be the allegation or the showing of probable cause of a crime to be committed?

Judge BELL. I can see some areas that would be of compassionate concern to the country. It might not be a crime in the sense of what we think of a crime.

I think, rather than approaching it from a standpoint of whether there is a crime involved or not, the emphasis ought to be put on probable cause. Lawyers and judges understand that; and laymen, too, understand what probable cause is. There could be probable cause if a crime is about to be committed or something else under the guidelines that would be against the national interest.

There is where the guidelines are important; in delegation by the President to the Attorney General to others, it is important.

Senator ABOUREZK. To be more specific, under the statute——

Judge BELL. Some things might be so sophisticated that it would not be a crime in the sense that people understand crimes, such as the national interest.

Senator ABOUREZK. Are you saying that you would be willing to give the President authority to wiretap without the potentiality of a crime being committed?

That is really the specific question.

What I am saying is that I think there ought to be the potentiality of a violation of law before a warrant can be requested, and probable cause to be shown for the violation of that law.

My question is: Do you agree or disagree with me?

Judge BELL. It is hard to disagree with you, but it is also hard to agree with you.

I can foresee some terrible thing that might come up against our country. I would not want to go through and look through all the United States Code to find a crime, if there is some probable harm imminent to the country.

Senator ABOUREZK. By this time, after 200 years of our existence, have we not pretty well covered in the criminal law statutes just about everything that could be of harm to our country?

Judge BELL. Well, you would think so.

I am just being cautious in my answer.

Senator ABOUREZK. I want to finish this one line, and then I will be happy to yield.

If you do not make sure that there is a potential violation of the law before you issue a wiretap warrant, then you are allowing an open hunting license. I am sure you see the danger in that.

Judge BELL. I would not do that.

I think there is some middle between hunting license and always finding a crime as a condition precedent to surveillance.

I am just being cautious. I do not want to overpromise, because you will be in touch with me. You will say, "That's not what you said you would do." I do not want to say I will do something. I think probably you are right, but I have not studied it enough to be certain of it. I know that you would not want me to overpromise.

Senator ABOUREZK. I do not want you to overpromise.

If you think for a minute that if you do not put some kind of restriction on how you obtain a warrant, then all there is left—there can be no middle ground—all there is left is a hunting license for the President to wiretap whom he sees fit.

Judge BELL. I am absolutely 100 percent against that.

I think you and I are probably in agreement. I want to be certain of that before I say so.

If you can just take the answer that I do not believe in a hunting license approach; most likely, there will always be a crime involved. That should be a condition precedent and probable cause.

Senator ABOUREZK. Is there a way that you can think of that you can deprive an administration of a hunting license without putting it in the statute?

Judge BELL. Yes. I can think of an expressed allegation of authority from the President to the Attorney General which has the effect of statute because it has the same limitations.

Senator ABOUREZK. And what if the President does not create that limitation?

Judge BELL. That would be a different question.

Senator ABOUREZK. That is what I mean.

We are not talking about this President necessarily or this Attorney General. We are talking about a statute that will be introduced this year that you will have to pass on one way or the other; and we are talking about the future.

Judge BELL. That is right. If that time comes to pass on the statute, I want to work with you on it. I would have in mind that delegation there had been. We could work this out, I think. This gets back to the accommodation and to protect the rights of the American citizens, while at the same time being careful to protect the security of the Nation.

Senator ABOURZEK. I want to come right back to that, but I want to yield to Senator Mathias now.

Senator MATHIAS. I have a very brief observation.

When the judge said he was reluctant to impose a statutory prohibition, it flashed through my mind at the moment that when the Houston plan was written and adopted there may have been a very genuine apprehension that a danger existed. In the minds of the people that wrote and executed the plan dangers existed. Acting in the real belief that such dangers existed, they said that they were going to do such things as wiretap, open mail, and do all that stuff.

It leads you back to Thomas Jefferson, who said: Put not your trust in men, but bind them down by the chains of the Constitution.

Thank you for yielding.

Senator ABOURZEK. I associate myself with those remarks.

It is to me a very serious and important question, Judge Bell, to allow any administration—I do not really worry about you or Governor Carter, to be honest with you. We are talking about a bill that will be in effect for a long time to come.

There might be a future Richard Nixon. God forbid. The power of the Presidency does funny things to people, as we have seen. I think it is very, very important for the protection of the rights of the American people that a President is not given the authority to go out in his discretion; and if you do not put it in statutory form, it is at his discretion. It is extremely important.

Judge BELL. The only hesitancy I have about agreeing with you is that I never thought about it in terms of an expressed crime being involved as a condition precedent. I am sure you can appreciate the fact that I have never been into this area. My total exposure has been in the few cases that I have seen in court. I am almost a neophyte, but I am studying it.

Senator ABOURZEK. In the area of criminal wiretap, everything must be covered by the potentiality of violating the law. We just want to close that particular loophole in national security.

When you are talking about dissident groups and those that disagree with the government in power, there is a great capability for the President to wiretap those people just to destroy political opposition.

Judge BELL. I assume your reference is to foreign intelligence?

Senator ABOURZEK. Yes.

Judge BELL. And involved with American citizens?

Senator ABOURZEK. That is right.

Judge BELL. The position I would take would be the same as yours, but I want to be certain about it. I am 99.9 percent certain.

Senator ABOURZEK. OK, but you want to reserve that other—

Judge BELL. One-tenth.

I reserve, I suppose, out of ignorance.

Senator ABOURZEK. I have another question on antitrust that I did not get around to asking this morning.

You talked about the length of time it takes to make final antitrust lawsuits and litigation. It is very complex and very long. Do you believe that in any cases it would be proper for the Congress—would you support legislation that would make a certain size of the com-

pany per se a violation of the antitrust laws? I am speaking of divestiture legislation.

Judge BELL. Monopoly?

Senator ABOUREZK. That is right.

Judge BELL. I have to think about that. You know, a lot of regulated industries are huge. We do not say anything about them because they are regulated. Some of the largest companies are regulated companies.

It may be that, once you developed the line of commerce that you are talking about, a certain size might be some per se indication. I never thought about approaching it that way.

Senator ABOUREZK. The purposes the antitrust division have pursued for a long time have kind of been made futile by the length of time it takes to litigate a lot of these cases. Justice Department attorneys leave, and they come in; you know how that works.

To try to prevent that kind of thing from happening, what would be wrong with this: Say, if an oil company reaches a certain size, it would have to start divesting some of its marketing functions, refining functions, transportation functions, and so on?

Judge BELL. I think the end you seek is finality of cases. I think you can do it other than by per se method. If you had a per se—when you say per se, you mean something like a rebuttable presumption. You would make a prima facie case by size alone. Then it would be up to the defendant corporation to show that they were not monopolizing?

Senator ABOUREZK. No; I would not base it on any kind of presumption, rebuttable or not.

I would say that, if an oil company produces 300,000 barrels a day or more—to take an example—then they could no longer own more than one phase of the entire oil corporation.

It is legislation that we have had in, and we will go into it again this year.

Judge BELL. I would want to look at that.

You are just looking at the oil industry?

Senator ABOUREZK. Not specifically, but that is one example.

Judge BELL. You have got the conglomerate problem. You would have to wonder what the effects of the spinoff would be. Then you have got the regulated industries; some of them are huge.

I think it is worth looking at. I would be glad to look at it. It is a good idea. I have not thought of it before.

Senator ABOUREZK. Do you have a position on the legislation promoted last year—and probably will be again this year—by the American Telephone and Telegraph Co., that would legislatively restrict their competition in the long-line part of the business?

Judge BELL. I read about that in some business periodical. That legislation includes spinning off or divesting Western Electric—

Senator ABOUREZK. No; that is different.

They are sponsoring this. American Telephone and Telegraph is behind this legislation that would prevent smaller outfits from coming in and competing with them.

Judge BELL. Of course, there is an antitrust suit going on which involves that and some other things against A.T. & T.

Senator ABOUREZK. Not that.

Chairman EASTLAND. Your time is up.

Senator ABOUREZK. I wonder if I could get a response, Mr. Chairman?

Chairman EASTLAND. Yes.

Judge BELL. At any rate, I have not studied that. I will look at that. That is something I would have to study.

Senator ABOUREZK. Thank you.

Chairman EASTLAND. Senator Riegle?

Senator RIEGLE. Thank you, Mr. Chairman.

We ran out of time the last time; we were right in the middle of a question. I was just reconstructing for the record the process by which the search had gone on for an Attorney General-designate in this administration.

I believe I recall your saying before the time expired that you had recommended several people. Is my recollection correct?

Judge BELL. I do not mean to say that I am the only one that recommended people. There are a number of people on the list, and there is probably more than one list. I only say one list.

I also added some people, and I sent in a list of my own. The list I saw, I guess, was an accumulation of names.

What I wanted to say to you, as I said yesterday, there were many qualified in my judgment.

Senator RIEGLE. Had you been asked to submit names? Were you part of a process or part of a group effort to actually screen candidates and come up with prospective nominees, or did you just do this on your own initiative?

Judge BELL. Well, I was not asked by any transition group to do this. The President-elect asked me.

Senator RIEGLE. He asked you personally to do this?

Judge BELL. Some time ago; before the election.

Senator RIEGLE. Before the election?

Judge BELL. Before the election.

I was to keep in mind anyone I thought would be a good person to be in the Cabinet. I thought about it a good while, and I finally decided I did not have enough expertise to recommend anyone except in the areas of the law. That is all I ever did.

Senator RIEGLE. So then you just went through this process in your own mind and put some names together and forwarded those names?

Judge BELL. Right.

Senator RIEGLE. Then I gather that there was another list circulated which you then had a chance to see and that you also made comments on it. Is that right?

Judge BELL. That is right.

Later on, as I would check out somebody, some other name would come up. I know a number of people were considered; they were good people.

Senator RIEGLE. I know from your earlier testimony that you lost out on the job you wanted most to Wade McCree.

Judge BELL. Well, I did not want a job. The longer I am up here, the more doubt I have about that.

[Laughter.]

Judge BELL. What I said was this: Had I wanted a job, I would have sought the job of Solicitor General.

Senator RIEGLE. You may or may not want to respond to this, but the list that was being circulated had how many names—a half dozen or a dozen or what?

Judge BELL. There were 12 or 15 names on the list that I saw. There were some other names floating around besides that list.

Senator RIEGLE. Was your name on that list, I wonder?

Judge BELL. I am told by the transition that it was. I saw in the paper last night that the transition filed some kind of a memorandum opposing me. I found out from a person who wrote the memorandum that that was not so.

I saw what they wrote. It was not any great shakes of a thing in opposition.

The first time I saw my name was before the election in "U.S. News and World Report."

Senator RIEGLE. You mentioned that yesterday.

Judge BELL. That was the first time. Later on, somebody told me they saw it in the "New York Times" that I had been dropped because I was too close to the President-elect. I do not read the "Times" very often because it does not get to Atlanta until a little late. I did not see that article. I was not keeping up with it really.

Senator RIEGLE. In terms of the names that you put forward and the ones that you had a chance to render judgment on, there were a number of qualified people that you felt comfortable in endorsing or felt would do a good job?

Judge BELL. Exactly.

Senator RIEGLE. But somehow or another, none of those folks were selected; you were selected.

Judge BELL. That seems to be the case. I do not mean to be flippant about it.

Senator RIEGLE. I just want to get it straight.

Judge BELL. I just got a call one day and was asked if I could come to the Governor's mansion in Atlanta. I went over there the next morning at 7 o'clock. I was asked to be the Attorney General. It took several days to work it out.

Senator RIEGLE. There are three other things I want to touch on in addition to that. They are unrelated topics.

In your colloquy with Senator Kennedy on the FBI and the possibility of a change in the directorship, you talked back and forth about the timing of that. You said it was not precise. I understood, I think, fully what you were driving at.

I want to get some kind of a general framework around that. I got the impression that we are talking about something that might take place within the next 6 months or so. Do you feel comfortable with that, or not?

Judge BELL. Since the morning session I have had a number of calls from supporters of the Director. The calls came from the Congress.

I expect if I could just stand on what I said this morning, it would make me a lot more comfortable. I realize I cannot always be comfortable in life, but I am working this out as best I can.

Senator RIEGLE. As you will find out, the calls will come in waves. You will get one side and then the other. There are others of us who feel strongly that there needs to be a new director.

We have no particular disrespect for the present Director, but the point is that there is a very strong feeling on the part of people in and out of the Congress that there is a need for a house cleaning. That probably takes a fresh person at the top.

So you are not comfortable with the notion of a 6-month time period?

Judge BELL. If I can finish these confirmation hearings, then I can go back to studying the Justice Department and meeting with people. I said I did not want to announce any appointments until I was confirmed. The time is getting so close that I might have to announce some after the committee votes, as soon as I am recommended for confirmation by the committee.

I told Director Kelley that I would be back to see him just as soon as I could have some authority. I will go back to see him to finish the conversation that I started with him.

What I said this morning was based on my first conversation. That is about all I can say about it now because I have not finished talking with him, nor do I have anyone lined up to take his place.

That is about the shape of the matter. I have got to develop both those things. If I could just leave it like that, it would help me; but that does not mean that I will not keep you fully advised. I will do that. In fact, I want to keep the entire Judiciary Committee advised as we go along on this matter. It is something we ought to handle.

Senator RIEGLE. Let me think about that. Let me go on to the next one.

With respect to the task force that you served on for Governor Vandiver, I understand that there were really two groups. The first group was a four-person group. You headed it. Senator Mathias mentioned the names a couple of times.

As nearly as I can find out, two of those people have passed away; and one is not in good shape and not necessarily a person that could be approached or spoken with.

Judge BELL. There is one who was on the committee; I think it is Harkum Perry who took Pittman's place. He is living and practices law in Albany.

Senator RIEGLE. Apparently there was a second group that convened at a somewhat later time with different membership. I do not know whether those other members are still around or not, but if they are I would like to suggest that the committee staff at some point quickly make an effort to talk with them and try to reconstruct better what the history of that time was.

As you have indicated, your own recollection on a lot of these things is not clear. It was a long time ago. Your records are not complete in this area.

Did you want to add something?

Judge BELL. I was going to say the other group—according to a story in the paper, there were 17 lawyers that met at one point in the Governor's mansion. Some of those people were legislators who were lawyers.

Senator RIEGLE. I see.

Judge BELL. But the same basic group was still operating from the beginning to the 1961 session when the law was finally changed. It was the same group.

Mr. Harkum Perry lives in Albany, Ga., and has a law firm there. He would know something about it.

Mr. Murphy is living, but he is in his eighties. The others, I believe, have passed away.

There will be a witness here later on in the day, Warren Cochran, you may have seen his name on the list. He is an Atlanta man who was the leader of a black group that met during this time. He remembers a great deal about it. I think if you examine him you will be able to find out what it was like and what was going on at that time.

Senator RIEGLE. It just seemed to me that, if we could track down the other members of that working committee, that might be a way to fill out this history a little more clearly.

Judge BELL. Mr. Perry is a lawyer in Albany, Ga. I am sure he is there now.

Senator RIEGLE. Do you recall—at that time I know you made speeches at different times because you have been asked to by local service clubs and what have you. Do you suppose there would be any speeches that you might have made at that time or around that time in local Rotary clubs or whatever that would bear on this kind of subject matter when you were serving as legal adviser to the Governor?

Judge BELL. I do not believe so. I doubt seriously that I would make a speech. You see, I was a lawyer. Even though I was chief of staff, I was a lawyer in this lawyers' group. I cannot believe that I would have made a speech on this subject.

Senator RIEGLE. You do not recall any?

Judge BELL. I do not recall any.

I have had some of my staff go through all my speeches. In fact, they have been through all my opinions, all my speeches, every Law Review article I have ever written. We do not have anything on that.

It is highly unlikely that a lawyer would have made a speech quoting what his client was going to say or do.

Senator RIEGLE. Except, as you say, there was a lot of feeling and public passion about these issues at that time. I assume that people who were participants were being called upon to make comment. I just thought that there might have been an occasion where you had had an opportunity to speak on this topic.

Judge BELL. Don't let me mislead you. It was a speaker's field day for people that were holding office or seeking office.

I was not holding office and did not care to hold office.

Senator RIEGLE. So, the long and short of it is that you do not recall any occasion where you would have made any public statements at that time?

Judge BELL. I do not, and I do not believe that I did. I have not been able to find where I did.

Senator RIEGLE. The last thing I want to get into now is this. There has also been some controversy early after your nomination was put forward with respect to your membership in some of these private clubs in and around the Atlanta area. I am not completely familiar with that history. If you could, I think it would be useful for the record and also so that everyone is clear on it, would you comment on it here as part of this record. It has not come up previously in these

hearings to my knowledge, and I have been here virtually all the time.

What is the situation? I know you joined this club at one point. Can you tell us what you have elected to do now and what your history was and what your intentions are with respect to the clubs that have been mentioned?

Judge BELL. I believe it was 1955 that I joined the Capital City Club in Atlanta. It is a downtown business club and social club where you have lunch and dinner. They also have something called Capital City Country Club, which is out on the edge of Atlanta. They have a golf course. I play golf.

In 1956 I joined a club called Piedmont Driving Club, which is probably the oldest club in Atlanta.

Senator RIEGLE. May I interrupt. When you say you joined it, you mean you actually—

Judge BELL. I paid a membership fee, and joined, and paid dues, and became a regular member just like anybody else that was a member.

I think 1956 was the driving club. I was a member of both clubs until I was appointed to the court. At the time I was appointed to the court, I was made an honorary member like nonmember judges, ministers, a few other groups, and the Governor.

Notwithstanding the fact I was a member, they put me in an honorary member status. The whole time I was on the court, I was an honorary member. That means you can use the facilities, but you pay no dues in one of the clubs; in the other club you pay small dues. You cannot vote or anything like that.

Somewhere along the line, while I was on the court—there is a club in Savannah; it is just an eating club. It started just after the Civil War. It is in an old home downtown in Savannah called the Oglethorpe Club. I joined that as a nonresident member.

My son is a lawyer in Savannah. When I go down there to see him, and my grandchildren, I find this to be a nice place to eat sometimes.

There are other clubs there, too, but I joined this club.

I was in that club, and I paid nonresident dues there. It was not an honorary thing.

When I resigned from the bench, I became a dues-paying member again in the Piedmont Driving Club and the Capital City Club.

When I was asked to be the Attorney General, I had a lot of things to decide, including things like conflict of interest, or whether I wanted to do it, or could afford to do it, or not. I had really not gotten around to thinking about the clubs.

I do not know what I would have done had I thought about it.

But once it came out in the papers I was a member of the Driving Club, I immediately called the press to tell them I was also a member of two other clubs. I did not want to be accused of withholding information in some way.

Within about 1 day or 2, I was tossing over in my mind what I ought to do. I finally decide that—I remembered, or my wife remembered, that during the Kennedy administration there was some great complaint raised against Robert Kennedy for being a member of a club here in Washington. She remembers that. Whether it's true or not, I do not know.

Senator KENNEDY. He resigned.

Judge BELL. That's what she remembered.

We decided that inasmuch as the Attorney General is so symbolic of equal justice under the law, then I ought to resign from the clubs.

I then issued a statement saying that I should and would resign from the clubs; and I intend to do that.

Let me add one other thing, because there has been a lot said about this and a lot written about it.

I don't judge other people about this. When I went on the court—I grew up in a segregated society—when I went on the court, I was a member of a segregated church. I was a member of a segregated State bar association. I was a member of a segregated Atlanta Bar Association and the Lawyers' Club. They all integrated.

These clubs now would permit you to bring black guests. They don't have any black members, but there has been a slight change.

I was at a Lawyers' Club and at a meeting when they debated bringing in a black member. There was a lot of resistance to it.

I expressed myself. That is that I thought it was wrong for the Lawyers' Club not to be integrated. I never went to a meeting for 3 years there. I helped some lawyers propose a person who is now a black judge in Atlanta. That is, to get into the Lawyers' Club. Now there are a number of blacks in the Lawyers' Club.

I drew a difference, though, in my mind, between the social club and the Lawyers' Club, because I thought the Lawyers' Club was vested with the public interest. Lawyers ought not to be kept out of a lawyer's group.

As for social clubs, I thought that you had a right under the freedom of association to be a member of a social club if I ever did think about it very much.

I never even thought about it from the time I was designated and when the publicity started.

Senator RIEGLE. You have reached a judgment that you think it would be inappropriate for the Attorney General of the country to belong to a private club which has a restrictive covenant with respect to excluding people?

Judge BELL. I do. But these clubs don't have restrictive covenants.

Senator RIEGLE. How does it work?

Judge BELL. I don't think you will find any private club in America now with a restrictive covenant. The Internal Revenue Code was changed 2 or 3 years ago so where they lose their tax exemption if they were a restrictive covenant.

Senator RIEGLE. But it is my assumption that if the mayor of Atlanta, for example, wanted to belong to the Piedmont Club that he's not really welcome to belong to it.

Judge BELL. He would be voted on.

I'm not saying he would get in. He could be proposed and voted on.

Senator RIEGLE. I'm not proposing that he's interested in joining either.

But the thing that does concern me is that I think your judgment that it would be inappropriate for an Attorney General to belong to a club that has that type of practice is an appropriate judgment.

I guess I'm still troubled in my own mind, because I think that likewise ought to apply to somebody who is a Federal judge.

Judge BELL. That is probably true. That's the only thing I can say on that—that I hardly know a judge who is not a member of a private club.

We once debated this on the fifth circuit at a court meeting as to whether we ought to continue in private clubs. We decided to continue in social clubs. That's all I can say about it.

That is a hard decision to make, but we did discuss it.

Senator RIEGLE. Have you made a decision yet, assuming that you are confirmed.

Judge BELL. We stayed in.

Senator RIEGLE. Have you made a decision yet, in terms of what you might do upon leaving the term of office as Attorney General, with respect to a club of this sort?

Judge BELL. No; I have not. It may be that these clubs would be integrated by that time. That would be hypothetical.

Senator RIEGLE. If you and I both work on that, the chances of that being so are greater than less, I hope we can.

Judge BELL. I've seen a lot of other things change in my lifetime.

Senator RIEGLE. That's all I have, Mr. Chairman.

Chairman EASTLAND. Senator Sassar, any further questions?

Senator SASSER. Mr. Chairman, I have no further question for Judge Bell.

Chairman EASTLAND. Senator Mathias?

Senator MATHIAS. Judge, I reflected over the lunchtime period on what you said about us having to put ourselves in the context of a different time and a changing time. I had that experience myself recently.

On the 2d of January of this year, I was the liberal Senator from Maryland. On the 4th of January, I was the conservative Senator from Maryland. [Laughter.]

So the situation has changed and changed the kind of position in which you find yourself.

Your testimony has been that you feel that you were a moderate force and that through your efforts you were keeping the schools open in Georgia.

Did you ever ask yourself in this period of time what kind of schools you were keeping open?

Judge BELL. What do you mean by that?

Senator MATHIAS. They were segregated schools that were being kept open weren't they?

Judge BELL. That is not exactly so.

If they were going to be kept open, they would be integrated schools eventually. That was the whole issue. That's why they wanted to close the schools. That is, to keep from having to integrate the schools.

Senator MATHIAS. This is the issue I think we have to grapple with here. What was the purpose of keeping these schools open? Was it ultimately to integrate them, or was it to maintain them as segregated schools?

Judge BELL. My purpose in keeping the schools open was to educate the children of Georgia. I thought it would be terrible not to have

schools. That was what I was working on. I think both sides were lined up on that basis. I don't think you could find very many people, black or white, who were worried at that time about the integration process as they were worried about having education.

I see what you're driving at. If we could go back to that time, the simplest thing to have done would have been—if we would have known what the law would have developed to be—would have been to have one law for the whole State. We would not have had all of this travail for 2 years.

That was not the way the law was progressing at that time. We see now that it would have been a much simpler way to handle it.

Senator MATHIAS. Senator Riegle raised the question of membership in the various committees.

As I understand it, in the summer of 1959, there was a court order which ordered the integration of the schools in Atlanta.

Judge BELL. Right.

Senator MATHIAS. Then, in July, the Governor named another group of lawyers to advise him on the situation which developed from this court order.

I know that the fellows who write headlines do not always reflect the stories. I have had that experience in my own life. The Atlanta Constitution reported on the 14th of July that Vandiver "Names Anti-Integration Team of Lawyers."

That is the second list that Senator Riegle referred to: Gene Cook.

Judge BELL. He was the attorney general of the State.

Senator MATHIAS. Whom I knew at one time.

Judge BELL. He is now deceased.

Senator MATHIAS. Yourself and Mr. Buck Murphy and Holcombe Perry and Peter Zach Geer.

Judge BELL. Geer. He was the Governor's executive secretary.

Senator MATHIAS. Was this the successor group to the first group, or was it sort of a continuation of the first group?

Judge BELL. I do not know what that was.

At that point—I don't know what the lawyer's group did, the ones you have named, there is no way to come up with a consensus, so I don't imagine we did anything.

At the time this happened—I read some articles in the last 2 or 3 days. I don't know whether that's the particular one. But does this say we met at the mansion, and they had a lot of segregationists chanting in the front of the mansion and that the Governor issued a guarded statement and for the first time didn't say anything about what he was going to do?

Senator MATHIAS. I'll be glad to offer it for the record, Mr. Chairman.

[The newsstory referred to from the Atlanta Constitution of July 14, 1959, follows.]

[From the Atlanta Constitution, July 14, 1959]

VANDIVER NAMES ANTI-INTEGRATION TEAM OF LAWYERS

(By Gene Britton)

Gov. Vandiver Monday night named a team of five lawyers to advise him on possible new legislation for reinforcing Georgia's anti-integration armor.

Vandiver picked his committee after a council of 22 aides and legal experts went over with him federal integration decisions in Little Rock and Norfolk.

EXPERTS SUMMONED

He summoned the experts by personal invitation last week after U.S. District Judge Frank A. Hooper ordered the Atlanta School Board to submit, by Dec. 1, a plan for breaking down racial barriers in the city's public schools.

The experts reviewed the federal rulings in other states in an effort to find new defenses for Georgia.

A small, orderly, hymn-singing crowd of segregationists "demonstrated" on The Prado outside the executive mansion during part of the two-and-a-quarter-hour huddle. The governor said later, however, that he and his conferees, closeted in a closed-in, second-floor sunporch, could hear nothing of the demonstration.

LEGISLATION EYED

After the meeting, Vandiver told newsmen the lawyers went carefully over the federal edicts and then suggested he appoint a "special group" to "assay carefully Georgia's present position and to make recommendations to me for possible legislation, if it develops that any is needed, to be presented at the 1960 or at other sessions of the General Assembly."

He named Atty. Gen. Eugene Cook; Griffin Bell, his chief of staff; B. D. (Buck) Murphy; Albany attorney Holcombe Perry and Peter Zack Geer, his executive secretary.

He said no final decision was reached Monday night on any possible laws that might be enacted "at the next session of the General Assembly or at any future regular or special session of that body."

At his news conference Monday morning, Vandiver indicated he was not, at that time, considering a special session.

"A special session is not anticipated at this time," he said.

The governor met reporters with a prepared statement at the end of the conference. He would not permit questions and said he didn't want to make any further comment. But he did say rumors that he might seek out-of-state legal assistance—possibly from Little Rock—were "ridiculous."

The conferees scattered quickly after the meeting, leaving the governor to face newsmen alone.

Earlier in the day, however, one of the invited lawyers said he wasn't sure what could be accomplished by the gathering, if anything. He called the meeting a good move on Vandiver's part, however, because it showed his "desire and willingness to do something."

He suggested that formulation of advice to the Atlanta School Board on whether to appeal the local federal ruling might be a major target of the conferees.

Vandiver didn't mention anything about that, though.

As he arrived at the meeting, Macon segregation lawyer Charles Bloch said he doubted the group would attempt to offer any advice to the Atlanta board.

READY TO LISTEN

But B. D. (Buck) Murphy, one of the board's defense attorneys, said he was ready to listen if some advice were to be handed out.

Vandiver's House floor leader and one of his top aides, Rep. Frank Twitty of Camilla, said if the lawyers and the governor should agree on new legislative proposals he'll do his best to get them passed by the General Assembly.

There was considerable effort at screening persons admitted to the Mansion. State troopers checked of names of invited lawyers and a group of state capitol reporters who had been cleared for admittance to the Mansion as they arrived.

TEXT OF MEETING

The following is a complete text of Vandiver's statement following the meeting: "At my request a group of distinguished Georgians have met with me at the Governor's mansion tonight (Monday) for the purpose of studying recent federal court rulings, decisions and orders regarding segregated education and for the purpose of reviewing Georgia's constitution and laws pertaining to that subject in light of these decisions.

"We have reviewed the ruling in the Little Rock case, in the Norfolk case and in other recent federal decisions. No final decision was reached at this meeting as to any potential laws which might be recommended for enactment at the next session of the General Assembly or at any future regular or special session of that body.

"The group present at the mansion suggested the appointment of a special group of attorneys to assay carefully Georgia's present position and to make recommendations to me for possible legislation, if it develops that any is needed, to be presented at the 1960 or at other sessions of the General Assembly.

"To make this study I have appointed to this special group the following: Hon. Eugene Cook, Hon. Griffin Bell, Hon. B. D. Murphy, Hon. Holcombe Perry and Hon. Peter Zach Geer."

Senator MATHIAS. It starts out:

Gov. Vandiver Monday night named a team of five lawyers to advise him on possible new legislation for reinforcing Georgia's anti-integration armor.

Then it comments on the fact that it resulted from Judge Hooker's order, and it refers to a small, orderly hymn-singing crowd of segregationists that demonstrated on the Prado outside of the executive mansion during a part of the 2¼-hour huddle.

The Governor said later, however, that he and his conferees closeted in a closed-in, second-floor sunporch could hear nothing of the demonstration.

Judge BELL. I do not know if that committee ever did anything. I don't think we could have ever agreed on anything. That was probably some publicity at that time.

That is sometimes called "rhetoric."

Senator MATHIAS. I know a little bit about that.

Judge BELL. That was near the end. That order had been entered.

Senator MATHIAS. Did this committee or did the original committee meet because of the fact that Thurgood Marshall had come down to make some speeches on the school question in August 1960?

Judge BELL. Not that I know of.

Senator MATHIAS. That was August of 1959, excuse me.

Judge BELL. I don't know about that.

Senator MATHIAS. You don't recall any such meetings?

Judge BELL. Did I meet? I don't know anything about a meeting like that, no. I went to a lot of meetings with lawyers, but I do not know about Justice Marshall.

Senator MATHIAS. Apparently his visits stirred up some further public interest. As a result of that, there was another committee. I don't know whether you were a member of that committee or not, but there was another committee which drafted a barratry law and made it illegal to stir up litigation, which on the surface, at least, was intended to keep Thurgood Marshall from making any speeches in Georgia.

Judge BELL. I don't know anything about that, but I know we already had a barratry law. I don't know why we drew another one. We have always had a barratry law. I suppose we had a barratry law when we adopted the common law. You are probably right.

Senator MATHIAS. There is an antibarratry statute enacted by the legislature, which was signed by Governor Vandiver, in early 1960—the 17th of March, I believe.

But you had no recollection of playing any role in that?

Judge BELL. I do not deny it, but I just don't remember all of these details of that long ago. I may have. I may not have.

Senator MATHIAS. Before we put the Vandiver administration to rest, what about the Sibley report? You mentioned that earlier in your report.

Judge BELL. Let me tell you one other thing that you left out, because this will not look too good either when you find out. These newspaper articles disclose it. Somewhere along there, the legislature created a committee on constitutional government.

Senator MATHIAS. I have that.

Judge BELL. But you haven't asked me about it.

Senator MATHIAS. Since you brought it up, I'll be glad to get into it.

It was similar to the commissions formed in a number of States at that period.

Judge BELL. That's what somebody's testimony is. I do not know that.

They passed this. I was appointed to it. If it ever met, I cannot remember. I doubt if it ever met. We had something else called a State's Rights Council going in Georgia. It was something like Citizen's Councils in other States.

I refused to join the State's rights council and Governor Vandiver asked me why and I said: Well, I don't join things. I'm a member of the Baptist Church and the Rotary Club. And that's about the only thing I've ever joined.

I let it go at that, and he later told me he was sorry he joined.

At any rate, this thing is different from that. If it was a sovereignty commission, as somebody said in their testimony, I would not deny that. That might be so. I don't know what they have in other States along that line, but I do not think this group ever met.

Now, other than that, we come to the Sibley commission. That's all I can remember.

The Sibley commission was designed, as I said yesterday, to let the people have some voice in whether they wanted to save the schools.

The general assembly was pledged to close the schools rather than integrate them.

We thought that if we could build on top of the elected officials some voice of the people, we might get somewhere. I drew the Sibley commission resolution. It has a lot of rhetoric in it.

It had to be passed by the same general assembly that was pledged to close the schools.

When you get down to about the second page of it, it gets down to just that. That is, what the issues are to be presented to the people.

If you will notice the way it is set up, the membership represented an organization. Mr. Sibley had some office. I think I told you about it yesterday.

I think we got him because he was a strong leader to be the chairman. He had all these hearings and had 1,800 witnesses, and this did have an effect on the legislature.

It did finally convince them that the people would rather save the schools and have schools, although they were integrated schools. They would rather do that than have no schools at all.

That was the end of the approximately 2-year period where all of the travail was taking place.

Senator MATHIAS. Although you drew this report, you weren't a member of the commission?

Judge BELL. I was not a member.

Senator MATHIAS. Did you sit with them in any of the hearings they had?

Judge BELL. I never did.

Mr. Sibley was a former partner in King and Spalding who had left to go and be chairman of the board of a bank—the Trust Company of Georgia.

His office was just down the hall from mine. He had left the bank and retired and was back there joined to our suite of offices, so I did not need to go to any meetings. I would see him every day, except when he was off on the road.

Mr. Sibley at this time was about 70 years old. This was a remarkable thing that he did to get on the road, and you cannot imagine the abuse he took at some of these meetings.

He held up and finally made the public voice—the voice of the people finally got into the act.

Senator MATHIAS. The report says that:

As a result of the hearings held, we find virtually unanimous sentiment among the people of this state of all races for continued maintenance of separate education as in the best interests of all our citizens.

You were not a member of the commission. We can't charge you with who they heard, or who they chose to hear, and that sort of thing. But do you know——

Judge BELL. Nor with the drafting.

Mr. Sibley was such an independent man that he wouldn't let anybody else have anything to do with the drafting. He fired the lawyer that they started out with. He was trying to tell him what to do, and he brought in another lawyer.

Senator MATHIAS. Did he ever discuss with you whether prointegration witnesses were interviewed by the commission?

Judge BELL. Oh, they had many prointegration witnesses. That was the purpose of it.

This divided families. It divided communities.

It was the first time people ever had a chance to speak up.

Senator MATHIAS. You said you did not draft it, but what was actually your role?

Judge BELL. In the Sibley commission?

Senator MATHIAS. Yes.

Judge BELL. I got it up. I thought of it.

Senator MATHIAS. You were the author of the idea of the commission but not the report?

Judge BELL. I didn't have anything to do with it after that.

Mr. Sibley asked me—I asked him if he would be the chairman. He said he would think about it, and he thought about it overnight. The next day he asked me if it was political, and if somebody was going to try to use him for political purposes.

I said: No. You are absolutely independent. If you do it, you're on your own.

He decided he would do it, and he did it. I never had any more to do with it. I talked with him from time to time. I knew he was having a terrible time at some of these hearings out over the State.

I think he rather enjoyed it. He liked a tough fight, as a lot of us do.

Finally, that's the way it worked out.

Senator MATTHEWS. My time is up.

Senator KENNEDY. Judge Bell, how important do you believe that the Voting Rights Act is?

President Carter has spoken about that legislation as being the most important single civil rights legislation that brought black Americans into the process in the South and other parts of the country.

I am interested in your reaction to that.

Judge BELL. I think that is the most important civil and political right that we have. I always said that we got the cart before the horse. If the blacks could have gotten the right to vote to begin with first, then we would never have had a lot of the other problems we had.

I believe in the Voting Rights Act. But long before the Voting Rights Act was passed, I was over in Mississippi and Alabama and south Georgia on voter cases, vindicating the rights of the blacks to vote.

So I believe that very strongly. I think every American ought to have the right to vote.

Senator KENNEDY. You are aware that there are challenges as to the constitutionality of that legislation and that they are finding their way up through the court system and may very well go to the Supreme Court itself.

Are you prepared to indicate to us that you are going to exercise every degree of power and influence that you possibly can if you are approved as Attorney General? That is, to support that legislation and its constitutionality?

Judge BELL. I am, but I want to be candid with you, Senator.

It was a hard thing for the South to swallow—that is, the fact that we were singled out of the whole Nation. It was restricted to a few States. Justice Black wrote very eloquently on that subject in the Supreme Court. Justice Powell has since.

The last time the act was extended, Congress did spread it some. It has now spread, and it includes some Mexican American areas. I think it is one of those cases where some court has probably held unconstitutional part of it that's on the way to the Supreme Court.

I am in favor of the Voting Rights Act. I am also in favor of extending it to wherever anybody's right to vote might be interfered with. This includes the whole country. That's the basic right in the country—the right to vote. That would be the only fault I would have.

If I were a Senator—I cannot do that as Attorney General—I would spread it even farther than it is now.

I don't say take it off the South. I would not ask for that. I would not try to take it off the South. It is a safeguard that we need.

Senator KENNEDY. Certainly in terms of your understanding of legislation at the present time, you have no hesitancy whatsoever in terms of supporting vigorously its constitutionality before the Supreme Court?

I understand that to be your position.

Judge BELL. It is.

Senator KENNEDY. Second. I understand that you're going to try to see how it can be expanded in terms of protecting those same basic and fundamental rights to other Americans in other parts of the country.

Do I understand that to be correct?

Judge BELL. That is correct.

Senator KENNEDY. On another issue, Judge Bell, in the next few days President Carter is going to issue his statement on amnesty.

I am wondering if he had consulted with you on that particular question and how you view the Justice Department's role in terms of that particular order and what degree of support are you prepared to give to that particular order should you be confirmed.

President-elect Carter has spoken about it. I think he has spoken courageously and frankly. It has certainly been a view that I have supported.

I am interested as to how you intend to implement that order and how important you think this particular issue is.

Judge BELL. I know what the substance of the plan is. I have seen it. I know what role the Attorney General would play in the plan, and I am prepared to carry that out. I think it is a reasonable plan from what I have seen.

It may be changed, but I have seen drafts two or three times over the past month.

The Attorney General will have some role in the overall plan.

I do not foresee any problem at all in implementing the plan.

Senator KENNEDY. Is there anything you can tell us about it at this time?

Judge BELL. I could not because I am not certain that they have finalized the plan.

I could say generally that it includes pardons for those who have been convicted. It includes a way of dropping the dead cases which involve fugitives. It has some change in the immigration laws. It deals with the military. It has some expedited forms of reviews in some instances. That's the last plan I saw.

I was mainly looking at what the Justice Department had to do. I have seen the rolls and records in the Federal courts where they carry all these fugitives. When you get a computer printout on the pending cases in the district courts, in the fifth circuit they have hundreds of these fugitive cases on there. Those are the cases we will dispose of.

Senator KENNEDY. Does it apply as well to deserters or just to conscientious objectors?

Judge BELL. You mean deserters who are really in the military?

Senator KENNEDY. Yes.

Judge BELL. There is some sort of review system for them I believe.

The plan I saw seemed to me to be an equitable approach to the problem.

Senator KENNEDY. Let me get back to the Law Enforcement Assistance Administration.

I apologize for moving back and forth, but our time is limited.

I think many of us, having been on this committee since the time that legislation was first implemented, were used to the time when all that any public official had to say was law and order and Congress would empty the pockets of the taxpayer in order to provide billions of dollars into the LEAA system.

In too many instances, it was without direction and without reevaluation and without careful review.

We had, under Chairman McClellan, extensive subcommittee hearings last year. One of the most compelling areas was in the support and assistance for the courts and the speeding up of the trials.

Judge BELL. Right.

Senator KENNEDY. And also the importance of trying to bring some kind of sense and consistency to sentencing.

Justice Burger has talked about that, and I have introduced sentencing legislation.

Could you briefly comment on the importance you place on a speedy trial, and also trying to get some uniform sentencing standards?

Judge BELL. The Speedy Trial Act helps the accused. It also helps society. Rather than being on bail, you finalize the trials and people are either incarcerated or they are freed. So both sides are helped by the speedy trial.

The review of sentences has become a big problem in the Federal system. A lot of the State courts have sentencing review in the appellate courts. The Federal courts have never had that.

We are now working on some rules with the Supreme Court to do it by rule, but it would not be as satisfactory probably to do it by rule as to do it by statute.

The appellate courts resisted that, and the district courts have also resisted appellate review, because they would rather review their own sentences.

In some States you have sentence review panels of trial judges. I think the Federal system, and I think it's best to perhaps do it in the appellate courts, but it's needed.

But I think it's a good thing that Congress is working on that and the Rules Committee too.

Senator KENNEDY. You will work closely with us on sentencing uniformity?

Judge BELL. Yes.

Senator KENNEDY. Before we leave the speedy trial and the help and assistance to the court issue, the LEAA has some broad authority to provide assistance through various State plans to the courts to speed up.

We have seen, for example, in Alabama under Judge Heflin, how effectively it can be done.

I am interested in whether you think that ought to be an important area or a priority area for LEAA as well.

Judge BELL. It ought to be and it will be after the new legislation is passed to which you refer.

The courts, whether true or not, thought that they were being short-changed by LEAA. They were not getting the resources that they needed.

Under your legislation that you're talking about, they would get more money.

People like Chief Justice Heflin in Alabama have built a fine, unified court system. He would be making good use of that money. He was representing the Conference of Chief Justices of the United States, which is the 50 chief justices. They are all interested in this.

I have talked to many of them.

Senator KENNEDY. You are interested in this also?

Judge BELL. Yes.

Senator KENNEDY. You would give it priority?

Judge BELL. Yes, I would give it priority.

Senator KENNEDY. An area that I think is important is the role of the Justice Department in protecting the rights of Indians.

In many instances, we have seen that where, within the Justice Department, regarding Indian matters, that those responsibilities have been disbursed between the Criminal Division, the Lands Division, the Civil Rights Division, and even the Tax Division.

Recently, the Department has worked out a procedure whereby—when they are called upon to represent an agency of government and where Indians will be parties—or at least their interests will be at issue—they will express both sides of the issue to the court in a case where Justice and Interior might have conflicting positions.

While this is an unusual procedure, the Indian tribes are in support of continuing it.

I would like to know whether you would look into this procedure, and whether you think it has worked in the recent past, and whether you will continue it.

Judge BELL. It's a puzzle to me. I want to look at it. How do you avoid a conflict of interest in a situation like that? I want to look at that.

I also want to get some emphasis on Indian rights. I will look at that.

I particularly want to look at the case in Maine which I know I have to look at in the next few days.

Senator KENNEDY. We have one in Massachusetts, too. It is a somewhat different, but similar.

Under the Non-Intercourse Act, the States have to get the approval for the grants of land. Most of the Western States complied with it.

As a matter of fact, it was carte blanche. Anything the States wanted, the Federal Government or Congress went along with.

The State of Maine failed to comply with those various provisions. That's the basis of the challenge in Maine.

In Massachusetts, we have a small but important area that is affected. There were a number of other areas in the east that are affected as well and disputed. It is a complex but important issue.

We will be talking to you about that.

In the basic kinds of conflicts which we have seen the Justice Department may differ with BIA in the Department of Interior and within Interior, in many instances, BIA is competing with the Bureau of Land Management whenever their interests are conflicting.

In too many instances in the past, the Department has represented the Bureau of Land Management or Land Claims and not the Indian issues. And having your interest in this, I think will be important.

If you would review that procedure which has been established recently it would be helpful. It seems to be working quite well. I will write you a note on that.

Judge BELL. That will be fine. I want you to do that.

Senator KENNEDY. Thank you. I appreciate your cooperation.

I have no further questions, Mr. Chairman.

Chairman EASTLAND. Senator Heinz?

Senator HEINZ. At the outset, I would like to make clear for the record that in our colloquy, which we had this morning, the case that

I think we were both talking about involved the city of Jackson, Miss., and was the case of *Palmer v. Thompson*. I think we both are aware of that.

Judge BELL. That's the swimming pool case. That involved the closing of a swimming pool?

Senator HEINZ. Yes.

The question was whether to operate swimming pools or not.

I would like to briefly return to the question of age discrimination. Senator Kennedy correctly pointed out this morning that the Older Americans Act does have antidiscrimination provisions. But, in a sense, they only apply to middle-aged Americans.

The cutoff on that, as I recollect, is either age 62 or 65.

People over that age do not have any protections against discrimination in employment.

I have a very strong bias in this area. I think that the law should apply to people over age 62 or 65. But I would like to know your feeling about it.

Judge BELL. Perhaps the Congress, I don't know what the Congress thought, but perhaps they thought most people over that age would not be employed. Social security laws being what they are, and most pension plans being what they are, maybe they did not think there was a need.

But I have a keen interest in old people. My mother was in a nursing home for 3½ years. I know something about the geriatric problems of the Nation. I would have an interest in it.

It would not be something I would be generating, because I would be enforcing the law. And if Congress passed it, I would enforce it.

Senator HEINZ. As a matter of personal view, do you think that a person's right to a job should not be abridged?

Judge BELL. What?

Senator HEINZ. Abridged. Should not be abridged.

Judge BELL. Do you mean that you don't think people should be compelled to retire?

Senator HEINZ. Right.

Judge BELL. I don't know about that.

I think there are a lot of employment plans where you have to retire at a certain age. I'm not certain that I think you ought to be allowed as long as you want to work, if that's what you mean.

Senator HEINZ. That's what I'm asking you.

Just because there are employment plans of that nature, do you feel that that is necessarily the determining factor?

Judge BELL. I have not really thought about it. Maybe I should say that. I have never thought about it.

It sort of blows my mind to think what would happen if suddenly everybody was told that they never had to retire.

Senator HEINZ. How old did you say you were?

Judge BELL. Fifty-eight. I would like to retire now. [Laughter.]

But I would have to think about it, you know. I don't know if the economy of the country could stand it.

But I think there would be a lot of things that would have nothing to do with the economy that would involve the rights of the older people. These are probably not being looked into so much.

If you know anything about nursing homes and retirement homes and that sort of thing, then you would know about it.

Senator HEINZ. Let me return to something we discussed yesterday, conflict of interest.

What are the terms of your withdrawals from King & Spalding, assuming you have equity in the firm?

Judge BELL. You mean will I be paid anything?

Senator HEINZ. I want to know whether you will retain an equity, or whether you will have any settlement with the law firm.

Judge BELL. It will be a complete severance. I retain no equity in the firm. I will be paid nothing.

Senator HEINZ. You will receive nothing in terms for giving up your equity in the firm?

Judge BELL. Zero. That's the partnership agreement we operate on.

If I am confirmed in a few days, I will leave there, and I will leave with nothing. I will not get any kind of payment. I will have no agreement to go back.

Senator HEINZ. I would say that that is as severe a settlement as you could ask for.

Judge BELL. Unless I paid them to leave. [Laughter.]

Senator HEINZ. During the time that you served on the fifth circuit, did you disqualify yourself as a matter of course from cases being argued by King & Spalding, which you had been a partner of before?

Judge BELL. I did for many years and finally decided I could sit on some of those cases, because I had no plans to go back.

I never sat on one where anything was in the office, of course, when I was there. I imagine 4 or 5 years went by maybe before I ever sat on one of their cases.

Just by the luck of the draw, I don't think I ever sat on about two or three the whole time I was on the fifth circuit.

It just worked out like that.

Senator HEINZ. You mentioned yesterday that as a judge you have had occasion to rule against your friend and former boss, Governor Vandiver.

Why wouldn't you have excused yourself from sitting on a case involving someone with whom you closely worked?

Judge BELL. Well, I could have. I was not disqualified. I could have refused and escaped my duty.

This was the biggest case that there had ever been in Georgia involving the political system. Probably if I was as old as I am now, I would have been glad to excuse myself. But at that time I thought it was my duty which compelled me to sit on the case. It was a three-judge district court.

I sat on it, and wrote the opinions.

You have to be very careful in the judiciary not to excuse yourself to escape hard cases. In the trade, you are not looked on with favor if you do that.

Senator HEINZ. To summarize the standards that you applied to yourself, how would you summarize them in terms of the standards you applied for disqualifying yourself?

Judge BELL. There are some legal disqualifications. I followed those strictly.

Then 2, 3, or 4 years ago, Congress passed an expanded disqualification statute where there is something that appears proper which is a standard. It is hard to measure, but you can do that.

I excused myself on two cases where I was not disqualified that I recall. One was a case involving a huge claim against an oil company. A man claimed that a fraud was committed on him by the court years ago—long before I was on the court—because the judge who tried his case owned the company that did a lot of business with this oil company.

So when the case came up to the court en banc, I excused myself—and I was criticized for doing it, because it was a hard case—because when I had been in the law firm before, we represented a small pipeline company that was owned by three or four oil companies, including one of these.

And I thought that this man, who already thought a fraud had been committed upon him, if he found out I was sitting on the case and then he found out I had been with the firm that represented the pipeline company, he would think for sure he wasn't getting a fair hearing. So I refused that.

When the book, "Kennedy's Justice"—Victor Navasky's book—was written, he once asked me about that case and how I happened not to sit on it.

Another time, a man in the *Butts* case, you remember *Butts v. The Saturday Evening Post*. A man came in my office to discuss the case with me between the trial and the appeal.

He had an interest, a monetary interest. He mentioned it. So when the case came up, I drew it, and I was supposed to sit on it. And I did not sit on it. You don't have to give a reason. You just approach it on the basis if it looks right.

That's what I will have to do in the Justice Department. If I do not do that, it will not be long before there will be no lawyer from the private sector who can go into government. I have to work out a way for that to be done, or we're going to lose a lot of talent—with me excluded.

We ought to be able to draw on that for the Government. I'm going to try to do a good job on that.

Senator HEINZ. One of the questions raised here, and to which you have given certain answers, is your membership in certain private clubs.

Am I correct that you sat on the case of *Biscayne Bay Yacht Club*, et al., April 15, 1976? Which involved, as I understand it, a question of whether a private club should be entitled to be an exclusive club? Is that correct?

Judge BELL. No, sir.

Senator HEINZ. All right. Would you care to tell us about that case?

Judge BELL. Let me tell you about that.

The law of the country is based on the Supreme Court case decided several years ago called the *Moose Lodge* that you can have a private club so long as it does not have what we in the judiciary call a nexus with the State. If it has any connection with a State, or a significant connection with the State, then you cannot maintain it as a private club.

Biscayne Bay involved the use by the club of Biscayne Bay. They had a dock built on Biscayne Bay.

The city charged them \$1 a year license for putting a dock out on the bay. It may have been a rent.

The question was not whether they could have a private club. That is conceded that they could. The question was whether they had lost their status of a private club because they were using State land and State water. That was the question.

That's the same as the *Barlinton*—some case in Delaware—where they built a restaurant in a building owned by the State. It was in Wilmington, Del., I think. They had such a nexus with the State, because they rented from the State and they could not run it as a private place. That was the point in that. I sat on that case en banc. Not in the original case. But I did sit on it.

Senator HEINZ. So in this case, you feel that your having been a member of clubs which did not have a nexus with a municipality then did not in any way disqualify you?

Judge BELL. That's not the same issue.

If somebody had sued the driving club, or the Capital City Club or any club like that, then I would have been disqualified.

Senator HEINZ. I have one other area that I would like to discuss with you.

You are the appointee of someone who is quite famous for a saying: "Why not the best?"

The other day in our hearings, in the discussion between you and Senator Bayh, you said that you thought that if a Supreme Court nominee—and this was with respect to Harold Carswell—had made racist statements in the past it should create a presumption against him. I'm not talking about racist statements. I'm not aware of any that you have made.

Judge BELL. I don't think you will find that I have made any.

Senator HEINZ. I do agree with your statement yesterday that such statements would create a presumption against the individual.

But I would like to propose an analogy and see whether you agree with me.

The analogy comes from our experience of recent years that we must recognize how important it is for the Justice Department to be above and out of politics and partisanship.

The analogy, therefore, is: Should there be a presumption against somebody who has been active in politics when that person is being considered for Attorney General?

The record is that you were very active on behalf of President John F. Kennedy in his 1960 campaign, and that you had some relations—which were detailed yesterday on the record—with Governor Carter during the course of this year.

Should there be a presumption of this committee against you because you have had some—once 16 years ago which was quite intense, and once this year which was less intense—political involvement with a candidate for high political office?

Do you believe the analogy holds? Should we as a committee set an extremely high standard of saying that in the case of an Attorney General, we have to seek the best, and the best is somebody with no political ties? Should we set that standard?

Judge BELL. Would this presumption you propose be conclusive or rebuttable?

Senator HEINZ. I would think it would—that would be the decision of each member of the Judiciary Committee. I know of nothing that takes place here that is not rebuttable.

Judge BELL. If it is conclusive, I might better go back to Atlanta. If it is rebuttable, then I think you will have to consider my record. You will have to decide if I am independent enough and have sufficient integrity to do what Governor Carter agreed I should do. That is to depoliticize the Justice Department, and to professionalize it and to run it as an independent law department of the Nation.

If you think I can do that, then I think you will have decided that such presumption as you raise has been rebutted. Otherwise, you ought to vote against me.

Senator HEINZ. The question I'm raising is simply: What kind of standard should we set for you?

Judge BELL. I think it would be a mistake to set a standard.

Senator HEINZ. It's somewhat of a rhetorical device to get you to think of it clearly as well as to inform my other colleagues that it is something we will be discussing, I am sure.

Judge BELL. If I may say so, I do not believe that we are going to be able to run the Government if we get everybody in the Government on the condition that they have led some kind of cloistered life, that they are absolutely broke, and that they can never have any kind of conflict of interest.

If that's the way we're going to run the Government, I think the Government will fail. That doesn't mean that people who meet those terms couldn't run the Government. But I think you ought to get all kinds of people.

I think it might not be a bad thing to have an Attorney General who knows something about courts and who knows something about politics and something about life and business. Maybe that would be a good thing.

Maybe you will have to take a chance on me to see how it comes out.

I think I've had the experience that will enable me to be a good Attorney General.

Chairman EASTLAND. Senator Heinz, your time is up.

Senator Bayh?

Senator BAYH. Judge Bell, you have been patient. I hate to belabor you further.

I would like to pursue that question just a bit, if I might.

I do not know of any litmus test on which we can rely to guarantee what kind of Attorney General or what kind of Senator or President or State legislator we get. We look at all the facts. In the final analysis, it's the cut of the human being. It is the individual. It is the character of the man involved.

Suppose you would get a call from the President of the United States—and I establish this as a hypothetical. I don't think we expect that kind of call from President Carter—but suppose you would get a call to be a party to a conversation the likes of which we have had disclosed which actually took place in the recent past, asking you to undertake and to fulfill a mission or missions or carry out certain responsibilities in the name of the President, as Attorney General, which you felt were wrong. What recourse would you have?

Judge BELL. If one of his people called me, I would refuse to do it and report it to him. And tell him I did not appreciate it. If he asked me to do it, and it was something I should not do, then I would refuse to do it. If necessary, I would resign.

When I say "necessary," it would not take much effort or much cause to get me to resign. I intend to be independent.

I would have to say this. If Governor Carter—I think he knows I'm independent. He has made a mistake if he doesn't know I'm independent.

I have my own reputation to worry about. As a good lawyer and a good person, I have my reputation to think about.

That's the way I would approach it. I don't think I will have that trouble, but if I do, I would be prepared.

Senator BAYH. I don't think you will either, but you would be prepared in the heady environment of the oval office with the Commander in Chief looking at you across the desk and saying: Mr. Attorney General, we've got to do this. The Nation depends on it. The security of the human race depends upon it. You have to do this.

You would be prepared to say: I'm sorry, Mr. President. You're wrong, and if you persist, I'll go back to Atlanta and practice law?

Judge BELL. I can't do it. He knows I would be glad to leave. I would not do that. I would stand up, if that will help you.

Senator BAYH. Let me ask your opinion on another matter closely related to one we discussed earlier when we were discussing the class action suits and access to the courts.

You seemed to exhibit a sensitivity for opening up our court system. From what you have said here and elsewhere, you seem to recognize the importance of burdens that are now on the court which have sort of an inconsistency with opening up the court.

Nevertheless, I think we have to accomplish both goals.

Would you tell us how you, as Attorney General, would view your responsibility in opening up the Federal court system in the area of habeas corpus?

It is sort of a tool of last resort to someone who may be denied constitutional rights.

The recent *Stone v. Powell* decision, decided I think last January, said in essence that even if a person's claim was valid, it could be denied if the petitioner had received a full and fair litigation.

This fourth amendment claim at the State court level—the final safety clause that was going to be removed, and then in an earlier case, the *Francis B. Henderson* case, which seemed to be a precursor to this, both these cases seemed to disregard a long line of precedents to the contrary.

Could you give us your thoughts as the man who, as Attorney General, will be in charge of the Federal court system and of the prosecutory branch of it?

Judge BELL. There is very little right to petition—that is for the writ of habeas corpus—in the Federal court.

In the early 1900's with the *Leo Frank* case, it was taken to the Supreme Court, and it held that so long as the court did not lack jurisdiction in the sense that there had been a breakdown of justice, that you couldn't get a Federal writ. Mob violence was what was claimed there.

Later on, in the case in Arkansas, the Supreme Court expanded it to include that sort of thing and adopted Justice Holmes' dissenting opinion.

It kept expanding until 1962 or 1963 when *Fay v. Noia* was decided. There was a great expanding of Federal habeas jurisdiction.

The courts are confronted with those cases.

Stone v. Powell is the first case that started back the other way to get back to the fundamental violations where you are denied, that it was a breakdown in justice where you are denied a lawyer, those sort of fundamental things.

As I recall *Stone v. Powell*, what it's saying is that the search and seizure, the fourth amendment claims, that's what most are based on, these need not be entertained in the Federal court for State prisoners if there has been an adequate remedy for them—not that they had it—but for them, they had it available, under State law.

That's a policy question. Whether or not the person ought to have an appeal in the State courts, and the same identical thing appealed in the Federal courts.

That has been, the duplication has been, one of the problems.

I do not know that this is such a bad opinion if we preserve in the Federal courts for State prisoners fundamental rights—that is, the right to have fundamental rights vindicated by habeas corpus.

Senator BAYH. I assume that we both agree that at least a part of the fundamental right is for a system of jurisprudence to be structured in such a way that illegal evidence or illegally gathered evidence is not permitted.

As I recall, one of the thrusts, or, in fact, maybe the cornerstone, of the argument, as I recall it, and correct me if I'm wrong, was that this would not have an impact to prevent this kind of thing from happening. That is, if you delayed it and then went on to the Federal court.

I think you could make the same argument that by the time it gets to the Supreme Court of a State, then the disincentive is——

Judge BELL. Let me start backwards.

A Federal prisoner, seeking a Federal writ, could raise this. A State prisoner has had the opportunity to assert his claim in his own State court. This is the problem with the dual court system.

Now, I think the knowledgeable people in this field know that *Fay v. Noia* was decided because they thought the State courts would not pay much attention to their own State prisoner's claims for the writ of habeas corpus.

The prisons were clogged with people. We did not have the right to counsel in a lot of States at that time.

All of that, some people think, passed. The State courts are much better than they used to be. Most of them have set up ways to have petitions for the writ of habeas corpus. These are good systems. Therefore, they do not need to have this duplication in the Federal courts. It is more of a policy question than it is a matter of simply not having an adequate procedural or appellate safeguard.

We have come so far in this country. In 1891 there was not even a right in the Federal system to an appeal from a criminal conviction.

But now a State prisoner in Alabama can commit a crime, be convicted in a trial court, appeal to the court of criminal appeals, apply

for certiorari to the Alabama Supreme Court, and certiorari to the Supreme Court of the United States, and that's on direct appeal. Then he can start on the writ of habeas corpus and run through the same four courts, which makes eight. Then he goes into the Federal district court in Montgomery, to the Fifth Circuit Court of Appeals, and back to the U.S. Supreme Court.

That is 11 times that that same issue has been presented. Some people think that is too long.

That is what the Supreme Court is getting at in the *Stone* case.

In *Stone v. Powell*, and I have not read it since I was on the court, but if that is extended, it might be, but it would be a bad policy. If it is extended beyond that, it might be bad. But these people are not without rights.

It depends on the State court system being good. If they are not good, or if there are abuses, then the decision ought to be changed.

Senator BAYH. That's the whole question. If you had the kinds of standards that you and I would accept as good and strong—protection of constitutional rights standards—at the State level, then the writ request would probably be denied.

The purpose for it would not be important.

But if you do not have the good, protective system at the State level, then it seems to me that this case is going the wrong direction.

After all, we're talking about the protection of a U.S. constitutional right, not a State constitutional right.

Would it not be fair to say that one of the reasons that the State courts have cleaned up their shops and have better protections now is because of their right to appeal to the Federal courts which have been granted?

Judge BELL. Doubtless.

And LEAA giving them funds and the merit selection of judges.

There are a lot of things that have happened to the State courts in the last 10 years.

I take great pride in that part of our country. The State court system has vastly improved. I have had a lot of dealings with them as a Federal judge.

At any rate, I will watch this. I know the point.

Senator BAYH. I wish you would study that.

The legislation which is being prepared to shore up what some of us think might have been a misinterpretation of the habeas corpus statute—that is, to correct that shortcoming—I would hope you would give careful attention to that as it applies to the *Powell* case.

Judge BELL. I will do it.

Senator BAYH. Thank you. My time is up.

Chairman EASTLAND. Senator Abourezk?

Senator ABOTREZK. Judge Bell, the claim of executive privilege has been used a great many times by the past administrations to withhold information from the Congress.

As Attorney General, you would be called upon to give your legal opinion about whether or not information may constitutionally be kept from the Congress.

I want to ask you a couple of questions on that issue.

What do you believe is the scope of executive privilege?

Judge BELL. I don't know if it's too broad since the Supreme Court decision and in President Nixon's case.

If it is an evidentiary matter. My understanding of law is that it is like the king, you have to give your evidence.

The king is like the chimney sweeper. Everybody has to give his evidence.

That's for a court that I'm talking about now.

You're talking about bringing it over to the Congress.

Senator ABOUREZK. If the Congress should try to obtain information from the Executive and he tries to assert executive privilege, how broad do you think is the scope of that assertion on the part of the President?

Judge BELL. I am not prepared to say on that. I would have to study that out.

I would think that the President ought to make sparing use of that privilege. I think the President ought to cooperate with Congress. The Congress ought to cooperate with the President.

Senator ABOUREZK. It is generally——

Judge BELL. The problem comes from the fact that people try to withhold facts for the wrong reasons. They just do not want to tell everything. They don't want people to know just what might have happened about a particular thing.

That is a misuse of the executive privilege.

Senator ABOUREZK. It is pretty well accepted that the privilege is a personal one and runs to the President himself and to his advisers on his personal staff.

For example, when they are discussing their policy options, the privilege will run to the staff to prevent the contingencies and other options.

Those are considered to be privileged, but in other areas—for example, if the Congress wanted to attempt to get information from the CIA through established procedures or from the Pentagon or other branches of Government, do you believe that that kind of information should be withheld from the Congress under the assertion of executive privilege? Or do you believe that Congress should be entitled to that?

Judge BELL. I would have to pass on that on a case-by-case basis. I can see that under certain circumstances it should be made available and in other cases, not.

The question may be a little too broad for me to answer.

Senator ABOUREZK. But, using the principle of executive privilege which runs to the President and to his immediate advisers, could you make an observation, based on whether information outside of that might be subject to executive privilege?

Judge BELL. There would have to be some good reason to assert executive privilege. There would have to be some good reason to assert it. There would have to be some meritorious ground.

My philosophy of constitutional government is that the three branches ought to corporate and not be against each other.

If I start from that base, then I would have to have a good reason to justify asserting executive privilege.

I have been criticized about the *Calley* and dissenting in the *Calley* case. I thought it was an outrageous thing that Congress would withhold the testimony of 13 witnesses who testified later against him. They

didn't respond to the subpoena, and another man was tried, and they wouldn't let these witnesses testify. But in his case they did testify.

It has nothing to do with guilt or innocence. It dealt with the fact that these witnesses were not made available. That was withholding of information, I thought. I still think it. I think you have to have justification to do that.

Senator ABOUTREZK. I would like to do this. I would like to submit some fairly technical and legal questions to you in writing so that you will have to study them. It is a complicated and technical area, but I would like to do that.

Judge BELL. I will try to do that. The chairman is not here at the moment, but Senator Riegle was going to give me some questions. I hope I will not be put into the position of not being able to be confirmed because I am having to answer a series of things or that the confirmation would be delayed. If that process is building up, I would like to know about it because somebody has to be the Attorney General.

Senator ABOUTREZK. I have no intent of that. I have four or five questions, just on executive privilege. That is all.

Judge BELL. If I could get those today, I would like to get them answered.

[The questions submitted by Senator Aboutrezk and the answers by Judge Bell follow.]

QUESTIONS ON EXECUTIVE PRIVILEGE SUBMITTED TO JUDGE BELL BY SENATOR ABOUTREZK

The claim of executive privilege has been used many times as you know by past administrations to withhold information from the Congress.

As Attorney General, you will be called upon to give your legal opinion about whether information may constitutionally be kept from the Congress.

1. What do you believe is the scope of executive privilege?
2. Do you believe the privilege is personal to the President, or may others within the executive branch invoke the privilege on their own behalf?
3. May the President delegate to his subordinates the power to invoke executive privilege on behalf of the President?
4. Can the President invoke executive privilege on behalf of a third nongovernmental party?
5. Are there any other grounds besides the advice privilege under which the President can withhold information from the Congress?

RESPONSE BY JUDGE GRIFFIN B. BELL TO WRITTEN QUESTIONS SUBMITTED BY SENATOR JAMES ABOUTREZK

I do not believe that the doctrine of executive privilege should be used, as it has in the past, as a shield to hide from the judiciary or from the Congress information that is truly necessary for responsible decisionmaking by these branches. Without considerable study, it is difficult to erect precise standards for invocation of this privilege in various circumstances. At this point, until I can analyze the matter in the depth which it requires, I can only assure the Committee that I will make an independent study of the doctrine of executive privilege and provide legal advice to the President on the limits of this doctrine irrespective of partisan political considerations by the President or others in the executive branch.

Senator ABOUTREZK. I know what you are used to. You are used to those interrogatories submitted by the opposing lawyer. I have been through that myself.

Judge BELL. We already have the answers prepared to Senator McClellan's questions from yesterday. We will get these prepared also.

I just wanted to make the point that this is a serious business that I am about. I need to get on with it.

Senator ABOUREZK. I don't want to involve myself in anything like that. I do not think that you ought to answer these off the top of your head.

Judge BELL. I prefer to answer them in writing if I can. That is a hard question that you asked.

To tell you the truth, I am getting a little tired. This has been going a good while. I am liable to make a snap judgment about something. I don't want to do that.

Senator KENNEDY [acting chairman]. Senator Riegle?

Senator RIEGLE. I will not need all of the time. I won't need a 15-minute time period here, but we are in a summary phase and I want to share with you some summary thoughts I have because I view this as a very special opportunity for us to think together about this.

Regardless of which branch of the Government we are in, we are in the same boat insofar as looking into the future together.

I have listened with great interest and care to what you have said since we have started these hearings. I think you have been sincere. I think you have been quite forthright with us in terms of trying to respond to the number of difficult questions, both in terms of your intentions as well as past history and so forth.

I appreciate the effort that you have made to be forthright and direct on these things.

Judge BELL. Thank you.

Senator RIEGLE. Let me emphasize four points.

I want to say again to you that I think your appointment is the single most important Cabinet appointment coming at this time. I think one thing that you have done for us is that you have tried to give us a sense of the climate in Georgia and in the South generally during a period of time of great change and difficulty and trauma and what have you.

You have not been here in Washington during the last few years. We have been going through an equivalent, although different, kind of an experience where we have had a President driven out of office for criminal misconduct; we have had a Vice President driven out of office for criminal misconduct; as I mentioned yesterday, two of the last six Attorneys General have been found guilty of crimes—one waiting to go to prison—so that you, or anybody else who comes to Washington at this time, come at the end of a very long and troubled period.

The lack of justice within the Justice Department has been absolutely in the center of that long period of difficulty.

I even think stretching back to some questions that were never really properly focused with respect to even the Vietnam war, not to mention the abuses of Executive power, Watergate, and other things that came afterward.

In any event, I am very sensitive to the responsibilities that settle on your shoulders, if you are confirmed—as you likely will be—and the task that you face in coming in at the end of a period of turbulent history of that sort to try to assume these responsibilities. Believe me, I have a deep sense of feeling and sympathy about the requirements

and the awesomeness of those responsibilities to settle on anybody's shoulders; I do very much in terms of them settling on your shoulders.

I appreciate the point you made about the mixed feelings you have about, let's say, the Carswell letter which has been a kind of a haunting matter for you. I don't want that to be what goes on your tombstone at some point in the future.

I hope that doesn't get made for many, many years. But I tell you what I would like to see on your tombstone. I think that all of us here want to see: A Good Job Done. I think our impulse, regardless of party, assuming you end up with this job, is to help you do it and help you do it well.

I hope that the clear sense of that comes through in all of our questions. I do not think that you have any hostile people here or questions here, really. They are pointed ones, but hostile ones, no.

The thing that I would hope that you could be remembered for at some future time is the fact that you really fought for justice. I can appreciate the distinction that I thought I heard you making along the way that a trial judge is not necessarily and in all cases in an active role rather than a more passive role in terms of your interpretation and reading of the law.

I think it is quite clear that the role of Attorney General is an active role and not a passive one, so it does, perhaps, involve a change in the kind of work, and the requirements of the job, coming off that long period of service on the Federal bench, where the requirement of leadership is more direct and more pronounced and much more a central focus of what this job has to be at this point.

The thing that I want really to convey to you is this. Great hopes were aroused during this campaign by President-elect Carter, and especially among black citizens and especially among other persons who have been left out systematically over the years, both by the system of justice and the economic system and other thing as well.

That was demonstrated, when the vote totals were tallied, in terms of where vast amounts of the support came from.

So out in Detroit today, which is a city that I represent in my home State, there are an awful lot of people who, not having had the opportunity to sit through these hearings or to know very much about you, are inclined to have great apprehension based on a summary of sort of past history and the whole question of what they might be able to expect in terms of leadership from you on the basic questions of equal justice and job discrimination and housing discrimination and any other form of discrimination that is there that needs to be moved against.

They are apprehensive, quite frankly, and I can understand that apprehension. There is also apprehension in terms of other witnesses who will be here and appear after you. I want to hear them.

But I guess what I am saying is this: As you move into a very different kind of job responsibility and on a much broader scale, coming out of the circuit that you worked in, and taking the country as a whole, I think that there is a tremendous keenness of interest and feeling by people who have to have you succeed because life isn't going to change or get better for them unless you do.

I can't begin to express in words how strong those hopes and expectations and requirements are in terms of the demands for excellence and for leadership. I, for one, just want to say to you that, assuming that this thing goes forward, you are going to have my high hopes, along with everybody else's, that your whole life has been a preparation for this responsibility.

You come at the most unique moment in 200 years in this country in terms of the responsibilities of this job assignment.

I think that the reason that you are finding these questions to you have taken longer, perhaps, than those to other Cabinet nominees, is that they are not going to take the job you are going to take.

So I think it is in that spirit that we gather in this room and I just want to sort of conclude this period of questioning by making some of those things very explicit with you.

Judge BELL. Senator, I thank you very much.

Two things come over me. One is that this is a great responsibility. I am seeking to undertake this.

It is also a great opportunity. It is one of the greatest opportunities that an attorney has ever had.

There are those people who are apprehensive, as you say. They will not be disappointed because people who know me and who will be here to testify will help allay some of that fear.

I will be an advocate Attorney General, not an arbiter as I was as a Judge.

Senator KENNEDY [acting chairman]. Senator Sasser?

Senator SASSER. Judge Bell, I have just one or two brief questions.

In response to some questions from Senator Kennedy earlier today, you indicated that the present Director of the Federal Bureau of Investigation, Mr. Clarence Kelley, was 64 years of age and that we could look forward at some time in the future to a new Director of the FBI. You did not specifically state what the time frame would be but indicated that, perhaps, it would not be in the too-distant future.

I was just wondering, sir, if you have had an opportunity to develop in your own mind what criteria you might establish for a new Director of the FBI?

Judge BELL. Well, we are attempting to prepare a profile of what the Director ought to be like. That is the only way I know to go about it.

The other way I am approaching it is maybe to interview 10 or 15 people and sort of get a feel for it. That is one reason that it is such a delicate thing. This is a sensitive job.

Whoever succeeds Director Kelley ought to be someone who would keep it for a good number of years. I do not know just whether you stay in law enforcement or go outside of law enforcement. That is the first question that we have to decide. We have to decide a lot about recruiting and the kind of people you want in the FBI. You have to think a lot about duty and what duties they are going to perform. We have to think about 5, 10 years from now—all of those things are in my mind. It is something that you have to give a lot of thought to. And I will.

As I said to Senator Riegle, I will stay in touch with the committee about that. This is too serious a thing for one person to do. I will be

working with the President, and I will be working with the committee on that.

To be certain that I don't arouse any fears anywhere else, I will also be working some with the House Judiciary Committee on this.

Senator SASSER. I must say, Judge Bell, that you are learning very rapidly how to handle the Congress. [Laughter.]

There have been periods, I think, in recent history when the Director of the FBI, while technically under the direction of the Attorney General of the United States, was, indeed, acting independently of the Justice Department and without much direction from the Attorney General.

I wonder how you would see your role as the Attorney General of the United States vis-a-vis that of the Director of the FBI.

Judge BELL. Well, for some reason the Congress this past year provided that the FBI Director would be appointed by the President and removed by the President, yet the FBI is under the Justice Department and under the Attorney General.

I have discussed that with President-elect Carter. I am in charge of the FBI and of the Director. That is a part of the Department of Justice. I will be the one who is accountable.

That is the reason I said yesterday that I might even have an office over there in the FBI Building. I do not know that I will be there, but I have been thinking some about it. You want to see people that you are accountable for.

I will be assuming that responsibility.

Senator SASSER. I have no further questions.

Senator KENNEDY [acting chairman]. Senator Mathias?

Senator MATHIAS. Thank you, Mr. Chairman.

I think we have proved one thing these last 2 days—Judge Bell is a very patient man.

Judge BELL. Thank you.

Senator MATHIAS. When we were discussing the Sibley report earlier, I did not offer it for the record but I will do that now. I offer it for the record.

Senator KENNEDY. Without objection, so ordered.

[The report referred to was filed with the committee and appears at page 749.]

Senator MATHIAS. In January 1961 there was a further package of Vandiver legislation on schools. Was that also a product of the lawyers' committee?

Judge BELL. I have no recollection or records that show that.

Senator MATHIAS. I might—just to refresh your recollection, there was one bill to provide for a system of local option elections on the opening or closing of schools.

Judge BELL. I think that was a recommendation of the Sibley Commission perhaps.

Senator MATHIAS. One was on tuition grants for state and local funds to children attending private schools. One was to specify appeal procedures for appeals for local school boards on school-law questions. One was a resolution for proposing a Constitutional amendment declaring that freedom from compulsory association at all levels of public education be considered inviolate.

It is your recollection that that would be the product of the Sibley Commission? Rather than the lawyers' committee?

Judge BELL. Yes; I think the lawyers' committee, by that time, was inactive, maybe. That is the best I can remember.

I had been out of there managing the campaign and all by that time, and the Sibley Commission sort of took over. I suspect the Attorney General's office probably drew those bills up.

Senator MATHIAS. When you launched the Sibley commission, they were on their own?

Judge BELL. Well, if you knew Mr. Sibley, you would know that they were on their own. That was his project after that. I hasten to say—I know that this doesn't mean a whole lot to you, Senator—that he has been greatly honored in Georgia for what he did. Recently the University of Georgia had a film made of his life on account of the work he did in the commission.

I know that you don't think too much of what we did, but that is sort of the way they think about it down there.

Senator MATHIAS. In January of 1961, the fifth circuit ordered the admission of Charlene Hunter to the University of Georgia. The Governor shut off the funds for the university, and 3 days later the court ordered the Governor to restore the university's funds.

Then, as you suggest, the next phase of the legislation took place which, according to your recollection, was the Sibley commission.

This package of bills that I have just specified was passed.

In September, then, of 1961 the Atlanta schools were integrated under the Ford plan with only ten black children being admitted to white schools.

Judge BELL. That was the biggest news in America that day.

Senator MATHIAS. In the interval you went to the bench.

Judge BELL. There is one thing that, perhaps, is worth telling you about in that University of Georgia situation where the two children were ordered admitted, and they cut the money off for 3 days and that sort of thing.

The law required the Governor to close the University of Georgia. He had a meeting of the State officers at the Governor's mansion to tell them that he was not going to close the university and that he had changed his position and decided that he was not elected to close the University of Georgia.

He invited all of the people, whom he had appointed, to resign from the government because he felt that he had embarrassed them about changing his position; and none resigned, so he did not close the University of Georgia.

Judge BELL. Maybe that was not quite as good as Governor McKelden, but he got to that point. He thought it was pretty good.

Senator MATHIAS. When we get up to 1963 and you are on the fifth circuit, did you have any reservations about rescuing yourself in the case which involved, really, this whole series of events that we have been discussing over the last 2 days?

How about the *Lattimer* case, *Calhoun v. Lattimer*, which you decided on June 17, 1963?

Judge BELL. Did it involve anything more than pupil or student transfer or placement?

I think it involved the progress in assigning the grades to be desegregated.

Senator MATTHIAS. You held that—

The Atlanta plan of desegregating the school system from the top down is conceived, administered, and comported with the Constitutional mandate and duty imposed on the school boards by Federal district courts, even though the plan permitted continued assignment of those children already in the same school and only gave them the right to transfer.

Judge BELL. I didn't feel that I had any conflict. It didn't involve any laws that we are talking about. It involved the speed of desegregation. There were a lot of other desegregations just like it in the fifth circuit. That case was appealed, by the way, to the Supreme Court.

They vacated the sentence and sent it back to start over because the record was stale. That was a case that, finally, was settled 13 years later. That was the same case.

To answer your question, I didn't think I was disqualified.

I think all those laws that were passed were either repealed or declared unconstitutional—one or the other by that time. Some were repealed. The tuition grant was repealed by the legislature itself.

Senator MATTHIAS. The other day when you were kind enough to visit me in my office, I gave you a present that you may not have wanted, a report of the Senate Intelligence Committee.

Judge BELL. I have not had a chance to read it.

Senator MATTHIAS. It does not make very good bedtime reading. It will give you some nightmares, in fact.

Judge BELL. I have a young man working for me who helped write it, so he has been briefing me some on it.

Senator MATTHIAS. I would hope that when you do get a chance to study it that you would look at some of the recommendations that were made by the committee, including bringing the intelligence agencies under the rule of law and not permitting intelligence activities outside of that legal framework.

Judge BELL. I will look at that. I promised you that I will. I will as soon as I can get back to the Justice Department.

Senator MATTHIAS. It is a wide-ranging report. It deals with the Department of Defense and the Central Intelligence Agency. I would hope that in your role as a principal adviser to the President and outside the administration of the Justice Department you would be advising him in dealing with the intelligence questions which have become so troublesome in not just the last administration but, really, the last 20 or 30 years.

Specifically the FBI is of a matter of particular concern. We found there was some dissemination of information of political and other improper purposes. I think there is no excuse for interfering with the lawful political activities of American citizens and harassing individuals through unnecessary investigative techniques and maintaining information on political beliefs and private lives of Americans; and opening investigations on the basis of advocacy of political ideals or activities which I think clearly contravene the rights of citizens.

One of the general conclusions that we came to was that the Attorney General should establish a program of routine and periodic review of FBI domestic security investigations and not let them, as was true in the period past, to be off on a frolic of their own, and to renew the internal regulations of the FBI and other intelligence activities engaging in domestic security activities in the United States.

I think your help and leadership in this area will be of enormous importance.

Judge BELL. As I said, I intend to continue what Attorney General Levi has already started and to police it.

Senator MATHIAS. I would think that this would be a subject both this committee and the Intelligence Oversight Committee will want to follow very closely over the years.

Senator KENNEDY. Judge Bell, I imagine that you are going to make available to the committee your financial disclosure statements?

Judge BELL. That is being prepared in Atlanta today. I hope to have it here by tomorrow.

What would you want me to do with it?

Senator KENNEDY. I think it ought to be submitted to the Chair, and the committee would make a judgment, I think, on how it should be handled.

In the presence of the chairman we mentioned this prior to the start of the hearings. I think the committee itself will make a recommendation.

Judge BELL. I hope to have it here by tomorrow. I will deliver it to the chairman.

Senator KENNEDY. Would you expect that there would also be, for the Federal judges and the like, financial disclosure statements, as well, to be submitted to you?

Judge BELL. For the Deputy, the Solicitor General, and the assistants there would be.

The Federal judges at this time have a system of their own which is not a financial statement, but I don't know why we couldn't superimpose that when we are selecting judges. All they report now are income sources. That is one for those already on the bench, but I think we could very well put this in for new judges at the time that they are up for appointments.

Senator KENNEDY. You will, then, pursue that?

Judge BELL. I will.

Senator KENNEDY. I have no further questions.

I think the other members of the committee have indicated that they do not either.

I want personally to express my sense of appreciation for your responses to the questions that I have asked during the course of these deliberations. As you very well understand, the American people, through the media and the written press, will, I think, welcome the opportunity to hear your responses directly. They have had a chance to do that. They will make their own judgments on this matter. Obviously that is a part of our function, to address these matters to you over the period of these last hours.

You have been patient with the members of the committee, and I think you have been extremely responsive on some very complex, diffi-

cult, far-reaching issues and questions; and I want to thank you very much for your responses and for your presence here.

Senator MATTHIAS. Mr. Chairman. I think it was understood earlier, but just to restate it, if there should be any occasion to ask the judge to meet with us again before the vote, then the members would have that opportunity.

Judge BELL. I intend to stay in the room. I know that I could leave, but I thought that it might be discourteous not to stay while my opposition appears. I will be around if you want to ask me any other questions.

Senator ABUREZK. Before you leave I want to express my thanks for the responses to the questions that I have asked. I appreciate your efforts.

Judge BELL. Thank you, Senator Abourezk.

Senator KENNEDY. Thank you very much.

Representative Parren J. Mitchell of the Seventh District of Maryland. Is Congressman Mitchell here?

[No response.]

Senator KENNEDY. Representative Michael J. Harrington of the Sixth District of Massachusetts. Is Congressman Harrington here? I know he was here yesterday. He is not here?

[No response.]

Senator KENNEDY. Mr. Justin A. Stanley, president of the American Bar Association, testified yesterday.

We will go to Mr. Clarence Mitchell, the director of the Washington Bureau of the National Association for the Advancement of Colored People.

Mr. Mitchell, we want to welcome you to the committee. You are no stranger to this committee. We always value your opinions and look forward to your comments.

TESTIMONY OF CLARENCE MITCHELL, DIRECTOR, WASHINGTON BUREAU, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Mr. MITCHELL. Thank you, Mr. Chairman and members.

I am accompanied by Mr. Nathaniel Jones who is a former assistant U.S. attorney in the northern district of the State of Ohio and is now the general counsel of our organization.

In addition, Mr. Jones has the care and custody of the numerous cases that we have involving school desegregation issues, and he will be prepared, if asked, to comment more extensively on some of the questions that I might raise by what I should say with respect to certain specific cases.

Mr. Chairman and members. I do have a prepared statement. In view of the technical nature of its contents, I would like your indulgence on reading it, if I may.

Senator KENNEDY. Fine; whatever way you would like to proceed.

Mr. MITCHELL. Thank you.

I am Clarence Mitchell, director of the Washington Bureau of the National Association for the Advancement of Colored People. I thank you for this opportunity to appear and to present testimony.

We are deeply troubled by President-elect Carter's nomination of Mr. Griffin Bell for Attorney General of the United States.

In his personal conduct—and now I refer to the President-elect—in his religious life, in his day-to-day expressions on public questions. Mr. Carter has set a fine example for those who want to serve all of the people of our country.

His election to the highest office in the land should enable the Nation to end geographic, racial, religious, sex, and other extraneous considerations when we appoint or elect persons to public office in the future.

As we look at the distinguished records of such southern Federal judges as the Honorable John Minor Wisdom, who, according to the information that I have here, was born in the city of New Orleans, La., and had practiced law there since 1929 before he went on the bench in 1937; or the Honorable Elbert Parr Tuttle of the fifth circuit, who, according to the information that I have, was admitted to the Georgia Bar in 1923 and practiced in Atlanta and Washington until he went on the bench in 1954; or the Honorable Frank M. Johnson, Jr.—I had the good fortune also to know his father who was a State judge and a distinguished and honorable gentleman—of Alabama and others who have displayed great courage in protecting the civil rights of our citizens—

Judge Johnson was born in Halleyville, Ala., and practiced law in Alabama from 1943 until the time he went on the bench in 1955.

When you look at the distinguished records of these citizens in the period of turmoil that has been so frequently referred to in these hearings, it is incredible that Mr. Carter would name Mr. Bell as his choice for the highest law officer in the executive branch of Government.

It is true that persons who have erred in the past are capable of reform. The record is filled with the names of outstanding public officials who once thought of their fellow humans as divided into superior and inferior groups based on race, religion, national origin, or sex.

Later, however, they became champions of the same groups that they had sought to downgrade. It is also true that many outstanding citizens in the legal profession, North and South, in addition to being brilliant members of their profession have placed their careers, the security of their families, and, indeed, their own personal safety, in jeopardy by declaring that the Constitution of the United States is color blind and all persons are entitled to equal justice under law.

Just to cite one example, I recall the memory of the Honorable Judge Warring, of the State of South Carolina, who very early in this fight and at great personal risk stood up for the equality of the treatment of people under the law. He was ostracized by his fellow South Carolinians. Somebody threw a brick through the window of his home, but he never retreated in the face of the most damning and damnable opposition.

It is also encouraging to see that new champions of human dignity are emerging in many States where resistance to desegregation was an essential element in campaigns to get elected to public office. They are abandoning that kind of rhetoric.

I might say in passing that one of the distinguished members of this committee, the Honorable Strom Thurmond, of South Carolina, was at a swearing in of a distinguished black judge on the Military Court of Appeals not too long ago—the Honorable Matthew Perry—over in the courtroom.

It seemed to me that a great part of the State of South Carolina, white and black, was there. There were only two speakers on that program. I was one; Senator Thurmond was the other.

I thought Senator Thurmond made the better speech on the matter of equal justice under law. I don't say that to indicate that Senator Thurmond now agrees with the philosophy for which I stand, but I do say that we are conscious of the fact that there is improvement in the South; and I am happy to say that I am on record on a television program not so long ago as saying that it has been my hope that the election of Mr. Carter to the highest office would finally enable us to end the War Between the States. I use that term in deference to those who like to use it.

Then we would get into a period where we would not act toward others with hostility just because they come from the South.

In my opinion, it is important to say that because there has been asserted by some—and if my memory serves me correctly even by Mr. Carter himself—that a part of the opposition to this nomination is based on the fact that the nominee comes from below the Mason-Dixon line.

I want to make it crystal clear that we are not opposed to this nomination for that reason, and it seems to me that the enormous number of black citizens who turned out and voted for Mr. Carter is the best evidence that can be asserted that the blacks of this Nation have held out the olive branch to the South; and they are ready to move forward to an era where we do not stand apart on the basis of geography.

But I say with all sincerity and without the shadow of a doubt in my mind that, as one who was observing that election closely, and as one who knows the apprehensions of the blacks in the State of Maryland where I live and from which members of my family have been elected to public office, I know that if, prior to the time of that election, there had been the news that the nominee was to be the Attorney General-designate of the United States, then the State of Maryland, which was carried by Governor Carter, would have been carried by Mr. Gerald Ford.

I say that not because I think that blacks would have voted for Mr. Ford, but I think they, along with so many other people in our Nation, are disillusioned about our Government. It was necessary for many to work to encourage them to come out to vote. It is my opinion that if they had thought that one who was so intimately involved with depriving our children and our children's children of their constitutional rights by the ingenuity of the legal process, then they would not have come out to vote; and I believe the State would have gone to Mr. Ford. I believe the same thing would have happened in the State of Ohio. I believe it would have happened to a sufficient extent in other States, and today we would not have this question before us because Mr. Ford would have been reelected.

I do not know whether the blacks would have voted for him, but it is my fear that they would not have voted at all.

It is encouraging to see these champions of dignity emerge, as I have said. On the other hand, there are some who profess to be reformed but who in fact still seek ways of turning back the clock or slowing down progress.

From the record it appears that Mr. Bell is in the latter category of those who profess to be reformed but who in fact are interested in turning back the clock. The record shows that after the 1954 school desegregation decision Georgia's Governor Vandiver embarked on a program of massive resistance to that decision. Mr. Bell was one of the persons who advised Governor Vandiver on how desegregation could be halted. He had the title of chief of staff.

Although Mr. Bell now seeks to minimize the importance of this title and any of his duties under it, in the most recent edition of *Who's Who* at page 224, which we offer for the record, it is listed as an important part of his biography.

I am aware of the fact—with your permission, Mr. Chairman, I would like to offer that for the record.

Senator KENNEDY. It will be made a part of the record at this point. [The biographical sketch referred to follows.]

Bell, Griffin B., U.S. judge; b. Americus, Ga., Oct. 31, 1918; s. A.C. and Thelma (Pilcher) B.; student Ga. Southwestern Coll.; LL.B. cum laude, Mercer U., 1948, LL.D., 1967; m. Mary Foy Powell, Feb. 20, 1943; 1 son, Griffin B. Admitted to Ga. bar, 1947; practice in Savannah and Rome, 1947-53; partner firm King and Spalding, Atlanta, 1953-59, mng. partner, 1959-61; U.S. judge 5th Circuit, 1961—. Chief of staff Gov. Vandiver of Ga., 1959-61; chmn. Atlanta Commn. on Crime and Delinquency, 1965-66. Mem. vis. com. Law Sch., Vanderbilt U.; trustee Inst. Continuing Legal Edn. in Ga.; bd. dirs. Fed. Jud. Center, 1974—. Served to maj. AUS, 1941-46. Mem. Am. Law Inst., Am. Bar Assn. (chmn. div. jud. adminstrn.), Order of Coif. Baptist Home: 3100 Habersham Rd NW Atlanta GA 30305 Office; PO Box 845 Atlanta GA 30301

Mr. MITCHELL. I am aware of the fact that, in the colloquy between Senator Mathias and others, Mr. Bell seemed to minimize the importance of that position. Indeed, there was an almost jocular reference to it, as somewhere on the level of a Kentucky colonel or, as Senator Mathias says, an admiral of the Chesapeake Bay.

But that was not what it meant to the blacks of this Nation and I don't believe that it is what was meant by the title at that time.

You know in the law there is the provision that the trier of the fact takes into consideration the demeanor of the witness: the manner in which he responds to questions, and the attempts at evasion, and things of that sort. I am not a member of this committee. I am a member of the Maryland bar. I do know what the duties of the trier of the fact are.

I will say to you that, after listening to Mr. Bell and after hearing his attempts to minimize the significance of that position and after hearing his evasions of important questions that were asked of him, I am convinced that we have not heard the full story of his involvement; and I will say to you that that standing alone seems to me to raise a serious question of credibility.

The question arises if Mr. Bell has, indeed, changed from the views on segregation that he may have held in the past, then why does he continue to proclaim his identity with a former Governor of the State

of Georgia who, during the campaign for office, said, "There is not enough money in the Federal Treasury to force us to mix the races in the classroom."

And who also said at another point :

I make this solemn pledge to the mothers and fathers of the people, when Ernest Vandiver is your Governor, neither my three children nor any of yours will ever attend a racially mixed school or college in this state.

After the election, Governor Vandiver sent four lawyers to the State of Virginia for the purpose of studying the massive resistance laws of that State. Mr. Bell, as he has indicated here, was one of those lawyers. The Governor then proposed a package of six segregation bills which he said were based upon a study by the best legal minds of that State.

As I recall the response of the nominee to inquiries on that point, he said that he was just looking around and checking up on and reporting back.

It is inconceivable to me that a lawyer assigned the task of going to another State to report on the complicated laws which were then in question would not have at least a scrap of paper on which he had a written assessment of those statutes, and which he would use to advise the individual, who assigned him to the mission, about what he found.

But according to the testimony that Mr. Bell has given, it must have been written on the wind because it is no longer available, and there is not a single shred of writing that would show what his opinion was of those statutes.

But we do know what the Governor said, and we do know that these are the laws that were enacted which the Governor said were based on that advice.

First, an act giving the Governor the power to close public schools to prevent integration.

Second, an act giving the Governor the power to close any unit of the University of Georgia to preserve "good order."

Third, an act providing tax credits for contributions to private schools.

Fourth, an act setting an age limit of 21 for entering State college and 25 for State graduate and professional schools. This was adopted—and I think Mr. Bell indicated this is true—because in the past most black applicants to white colleges in Georgia and elsewhere in the South had been over these limits.

This is the kind of thing which gives evidence of evasion. Here is an ingenious scheme that has been devised to keep people from having their constitutional rights. It must surely have required a great deal of thought and a great deal of serious consideration by those legal minds who prepared it. But Mr. Bell has no recollection of it whatsoever.

Fifth, an act establishing a commission on constitutional government. This was what was known at the time as a "State Sovereignty Commission," whose purpose was to foster segregation through proposing legislation, constitutional changes, and litigation tactics, and by circulating segregationist propaganda. This commission replaced the commission on education—of all things—which had a similar function.

Sixth, an act barring use of taxes to pay for integrated schools.

I don't see how anybody standing a block away from a place where these things were concocted would fail to remember something about

it. And if he had been vested with the authority to make an inquiry which subsequently preceded the adoption of those statutes, surely that would be a strong recollection and at least if he felt they were wrong or he felt they were contrary to the requirements of the Constitution, then he would be in a position to say specifically why.

But, as I have been listening to the testimony here, nothing that he has said has shed any light on the definitive aspects of this, except—and I heard the nominee make this statement on television as he did here before this committee—that he was working behind the scenes.

These are not times for people who worked behind the scenes. Those were not times for people who worked behind the scenes.

There were many people in the State of Georgia—Ralph McGill for one. There were persons who were in the judiciary like his colleagues on the fifth circuit who did not get behind the scenes. They came out and made declarations for the law.

We have had great criticism for the people in Nazi Germany under the Hitler regime who stood by while humans were put in the gas ovens and while there was degradation of people by making them wear a yellow armband or a Star of David. We said: "How was it that the German people stood by and let these enormous crimes take place without in some way intervening or making themselves heard?"

We do not have to go to Germany to ask that question. Because in the State of Georgia and in other States the rhetoric, the enactment of these laws, and the attempts to downgrade the U.S. Supreme Court decision evoked the most basic and savage passions—passions which led to the killing of a young officer of the U.S. Army who was down in the State of Georgia on military duty and on his way back home to Washington, simply because he happened to be black and stopped at a place to get a drink.

This led to the deprivation of opportunities for children to get an education so that thousands of them never did get the kind of education that the Supreme Court said they were entitled to in 1954.

I am happy to say that there were many people who stood out against those kinds of things, but Judge Bell was not among them. Instead, he was among those who were fashioning programs of resistance for the purpose of trying to see that the Supreme Court's decision was not carried out.

I shall offer, with the permission of the Chair, articles from the newspapers which have been referred to here in the testimony which underscore the fact that, whatever may have been Judge Bell's concept of his role, it was the role assigned to him by the press and others. He was among the chief architects of this program of desegregation, that is, of resisting desegregation.

It does seem to me that when the Governor of a State says that he conferred with the best legal minds of the State on how to block the effect of court decisions opening schools and colleges to the attendance of the blacks—and Mr. Bell says that it was his role behind the scenes to prevent them from getting too far from where they ought to be—then there ought to be at least some little declaration, some little statement, if only in 6-point type on the obituary page of the paper, indicating that when these things were said and done Mr. Bell went on record as saying that they should not be done and that he did his best to stem the tide.

But we don't have that. We only have his assurance that he cannot remember that ugly part of it, but he does remember the part having to do with the Sibley Commission which, in his judgment, is an enlightened development but which, in our judgment, is just a more sophisticated attempt to evade the court's decision.

In a recent television interview Mr. Bell seemed to be brushing off his role in these plans and discussions and tried to give the impression that he was working behind the scenes.

I think that again and again, as that question was asked of him about his role, Mr. Bell left out some important words at the end of the sentence. He said that it was his job to try to keep the schools open. It seems to me the important words he left out, which again and again surfaced in the record, are the words, "keeping the schools open but on a segregated basis." In other words, he was not doing what the law required and that is to make a good-faith attempt to comply with the 1954-55 decisions, but he was doing what the Supreme Court once said that you can't do.

In a voting rights case it said that the Constitution of the United States prohibits simple-minded, as well as sophisticated, attempts to negate the 15th amendment. I think that also happens with respect to the 14th amendment. And, indeed, this was not a simple-minded attempt to negate those rights. This was a highly sophisticated, carefully engineered, legal-genius contribution to obfuscation and to the denial of rights to the blacks.

In our investigation of Mr. Bell's record, we have obtained information which, on its face, indicates that he may have had a more sophisticated approach to maintaining racial segregation than the Governor, but he was in favor of maintaining separation of the races. In that connection, we offer information which we believe the committee should explore and question Mr. Bell on just what took place in the meeting that this material describes.

I have for the committee a letter which was written to the Governor of the State of Georgia, then Mr. Vandiver, and in that letter the writer gives a copy of a decision which was written by a judge in the Calhoun case of Atlanta. That letter says that, and I will read it, it is dated July 9, 1959: "Hon. Ernest Vandiver", et cetera. "In accordance with our telephone conversation, I enclose a copy of the order handed down today by Judge Hooper in the school case."

This was a very limited decision and a decision which, by today's standards, almost looks comic in that it purports to be accomplishing desegregation but was in fact permitting continued evasion and delay.

There is attached to that, of course, a copy of the decision, but there is also attached to it a handwritten memorandum which is included in the executive papers of the Governor of the State of Georgia, Mr. Vandiver. This, which I have submitted, is a photocopy, and it is from the executive correspondence of the Governor of Georgia.

On that memorandum, which is in handwriting, it says this. Apparently, it purports to give the views of those who were at that meeting as to what should be done about this decision which the judge handed down and which the writer of this letter appended to the correspondence.

First, there is this inclusion: "Murphy recommends appeal. Thinks decision is erroneous."

Then, the next one, that is, the next observation is: "Judge Tuttle"—one of the most distinguished and humane judges—"would certainly affirm this case. Does not know what the other judges on the fifth circuit would do. Judge Tuttle thinks Brown decision eminently correct."

Then, this is the observation: "No other judge on fifth circuit is as bad as Tuttle. Seven judges in all, they sit in divisions of three."

This is interesting that the judge who has the most outstanding record on civil rights and in trying to protect the constitutional rights of people in this meeting was referred to as the worst judge of all on the fifth circuit.

Senator BAYH. Excuse me, Mr. Mitchell; could you give us the date of that *Calhoun* decision, please?

If it is not readily available, then that's alright. I thought maybe you might have it.

Mr. MITCHELL. The decision was July 9, 1959.

Senator BAYH. Thank you.

Mr. MITCHELL. The letter containing the decision was July 9, 1959, and signed by a name that I cannot quite understand—Oh, Mr. Buck Murphy. I couldn't read his writing.

Then there is an observation by Mr. Bloch who says that he thinks "two judges on court would be in our favor."

Then there is an observation attributed to Mr. Bell which says, "doubts advisability of appeal—might put us in worse shape."

As I said, this was already a decision which didn't amount to much, but Mr. Bell, if correctly quoted in this handwritten memorandum says that you could be even worse off, presumably if you went to the court of appeals and they broadened the decision.

Then there is a notation: "committee appointed—Buck Murphy, Peter Zack Geer, Holcombe Perry, Griffin Bell, Gene Cook." Then he says, "make recommendation for possible legislation, if needed, and report to me."

What I would like to know, since this memorandum was apparently written by Governor Vandiver, is this. Does it not seem that Mr. Bell ought to be able to reconstruct from his memory or references or notes or some other kinds of things just what went on in that meeting?

I heard him verify something which was mentioned in the press. There was a story in the press that said that a group of segregationists had come out and were singing hymns hoping that the Governor would continue in a program of segregation. In his testimony I heard Mr. Bell describing the atmosphere in which they lived, and he said: You cannot imagine what it was like. There were people outside singing hymns and carrying on.

Well, if he could hear within the confines of the meeting the hymn singers on the outside, then surely he would have been able to understand and remember what was going on inside among those who were trying to subvert the Constitution of the United States and its efforts and its guarantees to protect citizens of all races and all faiths.

I would like to offer that for the record, Mr. Chairman.

Senator KENNEDY. We will add it to the record at this point.

[The material referred to follows.]

POWELL, GOLDSTEIN, FRAZER & MURPHY,
Atlanta, Ga., July 9, 1959.

HON. ERNEST VANDIVER,
Governor, State Capitol,
Atlanta, Ga.

DEAR ERNIE: In accordance with our telephone conversation, I enclose a copy of the order handed down today by Judge Hooper in the school case.

Yours sincerely,

BUCK MURPHY.

[Civil Action No. 6298]

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA,
ATLANTA DIVISION

VIVIAN CALHOUN, ET AL, PLAINTIFFS

v.

MEMBERS OF BOARD OF EDUCATION, CITY OF ATLANTA, ET AL., DEFENDENTS

ORDER OF COURT

This case having come on for trial on the 5th day of June, 1959 and the Court having made and filed on the 16th day of June, 1959 its Opinion, Findings of Fact and Conclusions of Law, and based upon such Opinion, Findings of Fact and Conclusions of Law, it is now ORDERED:

1. That the defendants and each of them, their agents, employees, successors in office, and all persons in active concert and participation with them be, and they hereby are, enjoined from enforcing and pursuing the policy, practice, custom, and urge of requiring or permitting racial segregation in the operation of the public schools of the City of Atlanta, and from engaging in any and all action which limits or affects admission to, attendance in, or education of, infant plaintiffs, or any other Negro children similarly situated, in schools under defendant's jurisdiction, on the basis of race or color;

Provided That, defendants will be allowed a reasonable period of time to achieve full compliance with this Order and for bringing about a transition to a school system and operated on the basis of fees;

Provided Further That, defendants are herewith directed to present to this Court, on or before the first day of December, 1959 a complete plan, adopted by them, which is designed to bring about compliance with this Order, and which shall provide for a prompt and reasonable start toward desegregation of the public schools of the City of Atlanta and a systematic and effective method for achieving such desegregation with all deliberate speed. Such plan may be submitted contingent upon the enactment of statutes permitting such plan to be put into operation.

2. That following the filing of defendants' plan with this Court, a further hearing will be held in this case, at which time the defendants may offer such evidence and arguments as they may desire in support of said plan and the plaintiffs may offer such evidence and arguments with respect to the plan as they may be advised to present.

3. This Judgment of the Court is not a final Judgment in the case and the Court retains jurisdiction of this cause for the purpose of entering such further orders or granting such further relief as may be necessary to bring about compliance with this decree and during such time as may be necessary to put into effect the defendants' plan.

This the 9th day of July, 1959.

FRANK A. HOOPER,
U.S. District Judge.

Appeal or not? 1st Questions

Murphy recommends appeal. Thinks decision is erroneous.

Judge Tuttle would certainly affirm case. Does not know what other judges on 5th Circuit would do. Judge Tuttle thinks Brown decision eminently correct. No other judge on 5th Circuit is as bad as Tuttle. Seven judges in all, they sit in divisions of three.

"Block"—Thinks two judges on Court would be in our favor.

"Bell"—Doubts advisability of appeal—might put us in worse shape.

Committee appointed: Buck Murphy, Peter Zack Greer, Halcombe Perry, Griffin Bell, Gene Cook.

Make recommendation for possible legislation if needed and report to me.

Mr. MITCHELL. Mr. Bell's recent pronouncements of his support of Judge G. Harrold Carswell and his claim of writing a court decision, signed by another judge, which would restrict pupil transportation, shows that there must be some extensive questioning of him to determine whether he is a new Mr. Bell, ready to uphold equal justice under law, or whether he is the old Mr. Bell, who was chief of staff for a segregationist Governor, attempting to give the false impression that he can now be trusted to be fair to all persons.

I do not make the suggestion of questions lightly, Mr. Chairman and members of this committee. As part of the reason why I say that, I offer the case Mr. Bell says embodies his views on how you should approach racial desegregation. It will be remembered that in a press conference, held after he was nominated, Mr. Bell said to the press that, although the name of Judge Dyer appeared on a given court decision, that was really his decision and that it embodied his views. He expressed the opinion that the Supreme Court had, indeed, adopted the same stance in the Austin, Tex., case. That case is known as the *Cisneros* case which arose in Corpus Christi, Tex. It is 457 F. 2d 142, and the opinion was handed down in 1972.

The interesting thing about that case is that the judges, who apparently were sitting en banc, went a number of different ways in reaching their conclusions. It seemed, with the exception of Judge Coleman who was a part of it, to be in agreement that there had in fact been unconstitutional segregation of the races in this case which happened to involve both Latin American citizens and blacks. They seemed to reach the conclusion that there had been in fact connivance on the part of the school board that resulted in this unconstitutional imposition of racial and language segregation.

But they arrived at different reasons for settling it. The majority said that they remanded it to the court below for further study but did not make it clear what the court was going to do. In other words, it was very much like the remedies in the Sibley report where you try to give more time to those who are interested in maintaining racial segregation.

But there was a vigorous dissent on the part of a group of judges, all southern born—southern raised, at least, if not born down there—who took the position that, of course, there had been unlawful segregation and, of course, it cried out for a remedy; but they said that the fact of sending this case back to the court below was one of the most terrible things and could happen and, indeed, in that opinion, which I would like to offer for the record, there was a strong statement by one of the judges in the panel which was concurred in by Judge Wis-

dom and Judge Tuttle. That statement was that this is denying the rights of these children and is turning back the clock, or words to that effect.

Now that is an odious decision. It is a decision which still calls for delay after all these years following *Brown*, and that is the decision that Mr. Bell said embodies his views, not when he was an adviser to the Sibley Commission or at least getting it set up, as he said, and not when he was the chief of staff, but when he was a judge sitting on the bench.

Then we have the Atlanta school case. There, in that case, competent lawyers had been handling it, and according to the information given to us there came a time when somebody in the power structure of Atlanta decided that they wanted to bring a speaker into a meeting who would explain how that case might be disposed of.

As we understand it, the speaker who came into that meeting was Judge Bell who was then sitting on a similar case, which I believe was in one of the counties of Georgia.

Judge Bell came in and outlined, as we understand it, what they could do to reach a decision which was a different decision from what they were required to reach under law.

Then he did this very interesting thing. He advised, according to the information available to us, certain persons, and I understand one of them is supposed to come here and testify in his favor. Mr. Lonnie King, and there may be others, but as I understand it he advised these persons to come and not bring their lawyers with them.

It is so fantastic that it is hard to believe that a judge, sitting on a case and wearing the robes of the Government of the United States, would say to plaintiffs before him in an important case: Come for the purposes of settling this and don't bring your lawyers.

They went, and the case was settled. As I understand it from our General Counsel—and he may wish to expand on it if there are questions—let us say that approximately 100,000 children could have been helped by this decision if it had been a proper decision and properly carried out. Out of that number there was some ridiculously low figure of about 2,500 out of that enormous number who were given what seemed to be a remedy.

So here we have at this late date in the country's history a situation where a Federal judge intervenes and advises persons not to bring their lawyers so that about 80 percent of the people who were entitled to their right under the law did not receive that right. It seems to me that that question in all of the exchange that has been going on here has not been answered.

The third thing has to do with the question which was raised by Senator Heinz with respect to private clubs. This is another reason why it seemed to me that the answers of the nominee were evasive. Those who were around here at the time we were working for the passage of the 1964 Civil Rights Act will remember that there was a great controversy about how far that act would go in protecting the rights of persons to have access to private clubs. It is my recollection, which anyone can easily find out about by reading the legislative history, that there was an effort on the part of Senator Sam Ervin, who used to be a part of this committee, to try to limit that particular

part of the public accommodations statute so that it would apply only to a thing which was a hotel, a restaurant, or something of that sort.

But, as a result of discussions, it was finally agreed that in the case of a bona fide private club, where in fact its members were such as the members of the Piedmont Driving Club or the other clubs to which Mr. Bell belonged, it would not be covered by the statute.

But in the case of a hotel, let us say, which offered, as a part of its service to those who had accommodations in that hotel, the use of a country club where there might be a golf course and chances to play backgammon, or whatever you do in country clubs, that this would be covered by the law, and you could not escape responsibility for admitting all persons. Indeed there have been some cases right in this jurisdiction which have upheld that principle.

But Mr. Bell's assessment of it, if I heard him correctly, was that there had to be a nexus of State action. There is no requirement under that statute that there be a nexus of State action for that particular part of the law. That comes under the commerce clause.

And it does seem that, because it did come under the commerce clause in the case that Senator Heinz was inquiring about, a judge had a duty, as a member of a private club which did in fact deny membership to people on the basis of race, to follow the procedure that the Federal rules require, which is to inform the litigants of the fact that he had an interest in such a club and that he was, indeed, a member, although it was probably not covered by the statute, and then give them the opportunity of whether they wanted to try the case before him.

It is not my suggestion. That is the rules under which the Federal courts are supposed to operate.

But, as far as we know, he did not do that. He went ahead and tried the case and, to my best knowledge, decided against the black and white plaintiffs who were raising what seemed to me to be the very question that we had in mind when we were handling the 1964 public accommodations law.

It may be that I am wrong in my assessment of the law. I do not believe I am. It may be that I do not have all of the facts. I do not believe that is the case.

But I do say that it seems to me that he ought to be called back and asked to answer the question in the light of the circumstances that I have explained, which is that this is a statutorily prohibitive problem, and certainly he had a duty to make clear that he, because of his involvement, might not be the proper judge to hear the case.

We, in the NAACP, have been before this committee at other times in opposition to various nominees. The record shows the performance of nominees after they took office or after they were rejected by the Senate proved that our worst fears were confirmed.

We opposed the nomination of Mr. Robert H. Bork to be Solicitor General of the United States. We were unsuccessful in defeating that nomination, and he became the chief architect of the outgoing administration's programs that were designed to undermine the guarantees of the 14th amendment in school desegregation cases. That proposal, which came from the White House, is so bad that even the gentleman who ran with Mr. Ford as the Vice Presidential nominee said that he didn't think it had a snowball's chance in a very warm location.

That is, indeed, what happened. It was assigned to limbo and not heard of again.

But Mr. Bork seriously presented it, and I am happy to say, as we told him in a conference "We knew what you were going to do to us, and that is the reason we opposed your nomination." It is nice to be right.

We also were unsuccessful in opposing the nomination of Mr. Justice Rehnquist to the U.S. Supreme Court. So far our concern appears to be justified in that case because Mr. Rehnquist seems to support slowing down the progress more or less across the board on civil rights.

I might interpose to say that we took a long time to decide what we were going to do about Mr. Justice Powell's nomination. There were a lot of Virginia lawyers who came up and said that we ought not to oppose it. We listened to them. We didn't oppose it.

As of yesterday, I guess we have cause for regret that we didn't oppose it because there was a horrible decision on housing which was written by Mr. Justice Powell and which seems to say that if you are rich and can afford a couple of acres of land up in Illinois with a nice house and that kind of thing, then it doesn't have to be segregated; but if you are poor and living in a slum or maybe some middle-class neighborhood, then the law does affect you.

So I say that on second thought that it appears that that was an unfortunate mistake in at least not registering our opposition.

We are aware of the fact that hearings on nominations are in progress on other persons who will serve as members of President-elect Carter's Cabinet. This is a courtesy that has grown up through the years. However, in a case such as that of Mr. Bell, where there are serious questions about his record on civil rights, this courtesy should not be applied.

Indeed, if a student of political science came into this hearing room and asked one simple question, it would confound every member of this committee. That question would be: Who sent this nomination to the Senate Judiciary Committee? As it is now, no one has sent it.

The President-elect does not have the power to send it. The incumbent President surely would not send it. Yet here we are in a Government building, spending Government money, and doing what you would ordinarily would do if you had a constitutionally sanctioned nomination before you which came from a President asking the advice and consent of the Senate.

We suggest that after the President-elect has been sworn in that he then can send this nomination to the Senate, and then it will be possible to make a full and careful investigation of his record; and it may also be possible for those who wish to clarify his role in the massive resistance strategy of Georgia and come forward and tell the people of the United States the facts.

It should be noted that Mr. Bell is quoted as saying that nominations to other posts in the Department of Justice should await his confirmation. Apparently this means that he would have other appointees, some of whom may be black, held as hostages until his nomination clears the Senate.

I am aware of the fact that Mr. Bell is quoted as saying in response to Senator Scott's question that he intends to nominate a black to the post of Solicitor General.

But there has been a lot of discussion in this hearing about the meaning of words. As I read the laws under which people are sent to the Senate for confirmation, they are sent by the President of the United States, and whatever may be Mr. Bell's intentions of nominating or suggesting the name of a person to be the Solicitor General of the United States, it does not mean anything until that word comes from the President-elect after he has been sworn into office and in fact sends it over.

So, as for now, in spite of the assurances and fair words, the fact remains that the possible black designees are being held in a kind of limbo as hostages until this nomination clears the Senate.

There are many forces within the Department of Justice already dedicated to turning back the clock. They have surfaced in efforts to destroy school desegregation decisions; they have made efforts to undermine the clear meaning of parts of title VII of the 1964 Civil Right Act, as amended.

These forces will still be there after the new Attorney General, whoever he may be, takes office. Unless the new Attorney General, the chief of that Department, has a firm commitment to uphold the civil rights laws in the Department's area of responsibility, we will see retreat instead of progress.

Now, I have a gem which I want to use to conclude with. I have gotten this out of the Congressional Record, and I did in fact hear it myself when it was uttered.

But, you know, Senator Riegle, you are the heir of a great reputation. Not far from where you sit, approximately when Senator Bayh is now sitting, sat one of the great men of our Nation, the Honorable Phillip Hart who, as you know, is now dead, and you have succeeded him.

We were engaged in a contest against the nomination of Judge Carswell. It seemed to me that evidence against Judge Carswell was convincing and damaging but, really, not quite as extensive as this which we have against Mr. Bell.

Late one night in the U.S. Senate I was in the gallery, and I heard Senator Hart say these words. He said: "Do we wish to put on the Court a man of whom we must say to 20 million black Americans, 'take our word for it; he really does not believe in segregation anymore'?"

Then he said: "In my book that in and of itself should persuade at least a majority of this body to say, 'We do not consent; we do not consent.'"

It seems to me that out from wherever hallowed place he may be, Senator Hart is speaking to us in this kind of situation. It seems to me he is saying, especially to the Democratic members of this committee: You would probably not be the majority party this time if it had been clearly known that you would give such gentle and cooperative treatment to a nominee such as Mr. Bell.

From my 30 years of experience around here, I believe that if this had been a nominee from a Republican President, the Democratic side of this committee would have given him the kind of going over which would have convinced the country that he was not a proper person to be in office.

But, as I have observed the progress of this hearing, there have been questions from the Democratic side which have had the effect of diverting attention from the real issues before us. There have been gently leading questions which would make the nominee look good in the eyes of the public.

So I say to you, members of the committee, that, of course, if this nomination is confirmed, then the blame falls at the door of the President-elect of the United States, but it will also lay at the door of the Democratic Party which is in control of the Senate of the United States. And it will be a terrible tragedy if the first vote which is cast in the 95th Congress in the Senate of the United States will be an anticivil-rights vote in support of a nominee whose record shows that, whatever else he may be qualified for, he is not a suitable candidate for the post of Attorney General.

With your permission, Mr. Chairman, I will close by offering two memorandums. One is a resolution passed unanimously by our national board of directors, and another which is a memorandum of substance prepared by the general counsel for our board chairman, Mrs. Margaret Bush Wilson.

That concludes my statement.

Senator KENNEDY. Does Mr. Jones have any comment to make at this time?

Mr. JONES. I have nothing further to add, Senator.

Senator KENNEDY. Without objection, the two memorandums to which Mr. Mitchell referred will be included in the record at this point.

[The two memorandums referred to follow.]

RESOLUTION

Whereas, the National Association for the Advancement of Colored People was founded in 1909 to "remove all barriers of racial discrimination through democratic processes" and "to take all lawful action to secure the exercise thereof" and

Whereas, in furtherance of such aims, the NAACP has relied on the judicial process, particularly in the area of obtaining the equal protection of the laws as guaranteed by the 14th Amendment to the United States Constitution; and

Whereas, the United States Supreme Court, on May 17, 1954, declared that "separate but equal" is fundamentally in conflict with the equal protection clause of the 14th Amendment; and

Whereas, the NAACP initiated efforts to give substance and meaning to that mandate in the lives of minority children; and

Whereas, Southern States, notably Virginia and Georgia, mounted campaigns of defiance and massive resistance; and

Whereas, with the election of Ernest Vandiver in 1958 as Governor of Georgia, massive resistance, through the enactment of segregationist, punitive legislation was, in 1959 and 1960, enacted into law; and

Whereas, Griffin Bell has publicly acknowledged serving as legal adviser and chief of staff to said Governor Vandiver; and

Whereas, said Griffin Bell traveled to Virginia and other Southern states with other lawyers, publicly described as "segregation attorneys" to study massive

resistance tactics and did recommend and facilitate the enactment of segregationist legislation; and

Whereas, Griffin Bell, in 1959, sat in on and participated in strategy sessions with Governor Vandiver and thus helped shape moves designed to close schools, including the University of Georgia, and the Atlanta public schools and to otherwise frustrate the democratic processes, rather than comply with the law of the land and specific orders of the Federal Courts; and

Whereas, on January 26, 1970, in a letter to the Senate Committee on the Judiciary, he recommended and urged confirmation of Judge J. Harold Carswell as Supreme Court Justice even though the latter's views on white supremacy were a matter of national awareness; and

Whereas, in the Fall of 1972, Griffin Bell, even though the Circuit Court member of a three-judge Federal court panel convened to decide on desegregation of schools in metropolitan Atlanta, addressed a meeting of community leaders and discussed ways in which compliance with a Court of Appeals mandate could be avoided; and

Whereas, Griffin Bell has publicly acknowledged holding membership in private clubs with racial and religious exclusionary policies while a Federal Judge; and disregarded the conflict of interest posed thereby in participating in at least one case in which the issue of racial exclusion was present, and

Whereas, Griffin Bell has been designated to become Attorney General of the United States: Therefore, be it

Resolved, That the National Board of Directors of the National Association for the Advancement of Colored People go on record as urging the United States Senate to reject the nomination of Griffin Bell as United States Attorney General and to ask President-elect Carter to nominate a lawyer whose record and commitment to the "removal of all barriers of racial discrimination through the democratic processes" is not in doubt.

To: Margaret Bush Wilson, Esq., Chairman, Executive Committee, National Board of Directors:

From: Nathaniel R. Jones.

Date: January 7, 1977.

Re: The Griffin Bell record, Attorney-General nominee.

The place to begin this discussion is with the two recent statements of W. Griffin Bell:

(1) On December 20, 1974, he stated he didn't know of Judge Carswell's segregationist speech at the time he endorsed, by letter, his nomination as a U.S. Supreme Court Justice on January 26, 1970.

(2) In acknowledging taking trips, at the behest of Georgia Governor-elect Ernest Vandiver to Virginia, Mississippi and other Southern "Massive Resistance" states in 1958 and 1959 and drafting anti-integration legislation, he nevertheless worked behind the scenes to effect peaceful integration.

With respect to point one, Bell conceded on the following day, that due to the fact that reports of Carswell's famous segregation speech had been widely reported days before his letter, he had to have known about it and was, therefore, mistaken in his denial. (Text of the Bell letter is attached as Exhibit A.)

With respect to the second statement, it is necessary to detail the massive resistance efforts that occurred in Georgia under Governor Vandiver's administration when Bell was both his chief of staff and legal advisor. It should be noted that the campaign waged by Vandiver was extremely racist. Typical statements included the following:

"There is not enough money in the federal treasury to force us to mix the races in the classrooms" (SSN, June 1958, p. 3).

"In August Vandiver pledged to close Georgia's schools rather than permit integration" (SSN, September, 1958, p. 12).

"Through an overwhelming avalanche of our ballots, we can let the whole world know that Georgia is still safe: that here segregated schools * * * are secure under the leadership of Ernest Vandiver as governor for the next four years" (AC, September 2, 1958, 2:1).

"On September 8 Vandiver promised 'massive resistance.' 'I make this solemn pledge to the mothers and fathers and to the people—when Ernest Vandiver is your governor, neither my three children, nor any of yours, will ever attend a racially mixed school or college in this state' September 9, 1958, 13:4).

"On September 9 Vandiver urged that his election would show the United States government that Georgia would never integrate its schools: 'You and I say to the U.S. Supreme Court that we will resist this tyranny at every filling station, in ever hamlet, in every militia district, in every county throughout the length and breadth of the State of Georgia until sanity is restored to the land' (AC, Sept. 10, 1958, 11:3).

Vandiver won the Democratic primary held on Sept. 10, 1958.

"In September of 1958, following his primary victor, Vandiver promised to use the Georgia National Guard and the State Highway Patrol to prevent integration." (SSN, October, 1958, p. 18.) "On September 12 he promised 'we are united as one, that Georgia children will continue to be educated in the segregated schools of their choice, regardless of the threat by the federal government to send a legion of federal marshalls.'" (AC, September 12, 1958, 1:8, 5:1.) "On September 30, however, outgoing Georgia Governor Griffin, noting developments in other states, urged that 'many plans' be developed to preserve segregation" (AC, October 1, 1958, 1:2).

Our investigation has not established what, if any, role Bell played in the campaign. It is clear, however, that during the period between his election, and his assumption of office, he sent Bell and three other lawyers, B. D. "Buck" Murphy of Fayetteville; Charles Birch of Macon; and Caster Pittman of Dalton, to Virginia to study massive resistance tactics being employed there.

On returning Bell and the others conferred with Vandiver on new legislation to prevent integration. The Atlanta Constitution reported that Vandiver "and his legal advisers concede that the present Georgia laws are not sufficient to maintain segregation in the light of recent court rulings," and that "his advisers will present new school segregation laws to the January legislature." Vandiver continued to insist that any school would be closed by the state if necessary to prevent integration, and opposed a "local option" plan urged by Atlanta Mayor Hartfield, which would permit city or county officials to choose to keep the schools open despite court ordered integration. (AC, November 18, 1958, 1:8; SSN December, 1958, p. 15.)

In December 1958 these four lawyers visited other southern states to learn about their anti-integration tactics, and thereafter conferred with Vandiver (SSN, January, 1959, p. 5).

Vandiver was inaugurated on January 12, 1959. Griffin Bell became his chief of staff.

These pre-inauguration activities of Bell as well as the post inaugural activities of Vandiver, with Bell as the legal advisor and chief of staff, must be evaluated against his latest explanation that he was actively working to maneuver Vandiver from the segregationist corner into which he had painted himself during the campaign.

POST INAUGURAL MEASURES

The Vandiver Administration at once proposed a package of six segregation bills, which Vandiver described as based on a study by the "best legal minds in the state," (SSN, February, 1959, p. 10.) Griffin Bell took, and was generally given credit for having fashioned this legislation.

The proposals, which were immediately enacted, included the following:

(1) An act giving the Governor the power to close public schools to prevent integration. (4 RRLR 181)

(2) An act giving the Governor the power to close any unit of the University of Georgia to preserve "good order." (4 RRLR 180.)

(3) An act providing tax credits for contributions to private schools. (4 RRLR 182)

(4) An act setting an age limit of 21 for entering state college and 25 for state graduate and professional schools. (4 RRLR 180.) This was adopted because in the past most black applicants to white colleges, etc., in Georgia and elsewhere in the South had been over these limits.

(5) An act establishing a Commission on Constitutional Government. (4 RRLR 193.) This was what was known at the time as a "state sovereignty commission, "whose purpose was to foster segregation through proposing legislation, constitutional changes and litigation tactics, and by circulating segregationist propaganda. This Commission replaced the Commission on Education, which had had a similar function. (2 RRLR 1049.)

(6) An act barring the use of taxes to pay for integrated schools. (SSN, February 1959, p. 10.)

Of the various legislative proposals which were signed into law by Vandiver in February 1959, (while Bell was chief of staff and legal advisor) there are several which have continuing relevancy for the NAACP.

Roy Wilkins on January 14, 1960, answered Governor Vandiver's January 11, 1960 charge that the NAACP was forcing the closing of Georgia schools by pushing integration. Vandiver had said: "Let us hope that the NAACP will not force the closing of a single school in Georgia."

Wilkins responded that: "The NAACP will not act to close any school. We have neither the desire intent or power to do so. If any school is closed in Georgia it will be because Georgia officials and members of the Georgia State Legislature choose to penalize the children of Georgia in order to defy the Constitution and to try to maintain a dead way of life. Use of the NAACP as a whipping boy will not conceal what Georgians are doing to Georgian."

Vandiver had steadfastly refused to recommend the repeal of laws on school closing. He stood fast in the refusal even though Federal Judge Frank A. Hooper, who, in June, 1959, had ordered the Atlanta schools to present a desegregation plan by December 1, 1959, had urged such repeal.

Throughout 1959 the debate continued as to whether schools should be closed rather than integrate. The mayor and leaders of Atlanta, which was the subject of a pending desegregation suit, generally opposed closing. Vandiver led the militant segregationists insisting on closing. (SSN, April, 1959, p. 7.) When former Governor Arnall said schools should be kept open if integration were ordered, Vandiver attacked this as "an invitation to the NAACP to file integration suits." (SSN, May 1959, p. 15.)

In June 1959, the Federal District Courts ruled that the Atlanta schools would have to desegregate; Vandiver announced he would close them down to prevent it. (SSN, July, 1959, pp. 1-2.) In July, 1959, a series of meetings were held in the Governor's mansion to formulate new segregation tactics and propose new segregationist legislation. Griffin Bell was one of the five attorneys involved. (SSN, August, 1959, p. 4.)

In the 1960 session of the legislature the fight about school closing continued, with Vandiver promising to veto any bill that would lead to integration. "We are going to resist again and again and again * * *. We will exhaust every legal means and remedy available to us * * * to keep the schools segregated." Vandiver signed into law an anti-sit-in bill, making it a crime to refuse to leave any premises on request (5 RRLR 534), another prohibition against the use of taxes to pay for integrated schools (5 RRLR 520), and an act permitting the destruction of records of unsuccessful voter registration applications. (5 RRLR 886; SSN February, 1960, pp. 1-2; March 1960, p. 15). Within a month there were large numbers of arrests under the anti-sit-in law. (SSN April, 1960, p. 3.) On March 19, 1960, Vandiver promised the Georgia Education Association he would close any school threatened with integration, though "only as a last resort." (5 RRLR 518.)

In February, 1960, the Legislature established a General Assembly Committee on Schools to help resolve the controversy on whether to close integrated schools. (SSN, March, 1960, p. 15). The chairman was John M. Sibley, an Atlanta banker. On May, 1960 a narrow majority of the Committee, led by Sibley, recommended a change of tactics, permitting local authorities to keep schools open but to prevent meaningful integration by (a) tuition grants, (b) allowing public school teachers to participate in state retirement benefits if they move to private schools, (c) a pupil placement law, (d) permitting local authorities to recognize school districts to preserve segregation, and (d) assuring white parents could pull their children out of any integrated school. (SSN, May, 1960, p. 1). Bell has informally taken credit for this new approach. The minority of the Committee wanted to continue the policy of closing any integrated school.

Antibarratry Law

In reply to a speech by NAACP Counsel Thurgood Marshall in July, 1959, promising to bring new integration suits, Vandiver (with Bell as chief of staff and legal advisor) warned against "stirring up lawsuits" and threatened criminal prosecutions and promised to set up a legislative Barratry Committee in 1960. (SSN August 1959, p. 4). And in fact an anti-barratry law aimed at the NAACP was signed into law by Vandiver in February 1960. (SSN March, 1960, p. 15; 5 RRLR 529.)

An anti-barratry law was one of the key weapons in the Virginia massive resistance arsenal and undoubtedly was imported to Georgia as a result of the November 1958 trip to Virginia by Bell.

A present member of this board, Attorney Samuel W. Tucker of Richmond, in 1960, was the target of disbarment proceedings brought by the Virginia Bar Association and the Commonwealth Attorneys for allegedly violating the anti-barratry law. Also, the Association was a target of a proceeding instituted by the Virginia Bar Association. The basic allegations against Attorney Tucker was that he filed class actions brought by NAACP Branches.

Similar moves were under consideration in other Southern states, including Louisiana.

That this, one of the most pernicious devices to deny access to the courts by blacks should have become part of the massive resistance strategies in Georgia while Bell was legal advisor to the governor, and following his visit to Virginia, raises a serious question which we shall call upon the Senate to address during the confirmation hearings.

Atlanta School Case

Bell's involvement with the Atlanta school desegregation case, *Calhoun v. Cook*, dates back to at least the drafting and introduction of anti-desegregation legislation designed to forestall efforts of Federal Judge Frank Hooper in 1959 and 1960 to enforce his order. Bell was central to the design of the strategies of resistance. After the June, 1959, order of Judge Hooper to the Atlanta school board, Vandiver announced his intention to close down the system. Griffin Bell attended the strategy sessions in the Governors' Mansion in July. For instance, the Atlanta Journal reported, on July 9, 1959 that:

"Governor Calls State Leaders to Meet Here,"

"Vandiver calling conference of key state officials and segregation attorneys next Monday evening at the Governor's Mansion."

The name of Griffin Bell was listed as among those in attendance. Also, the Atlanta Journal declared on July 14, 1959, that, an agreement had been reached by top level Vandiver advisors, legislators and "segregation lawyers" to appeal the Atlanta desegregation order.

He also appointed a Committee to study and make recommendations for possible legislation, "if it develops that any is needed.

Griffin Bell was present.

At an emergency meeting called by Vandiver of 17 "key segregation lawyers" to discuss the Atlanta case, Bell was present. It was stated that:

"The lawyers may discuss laws that will place the power of the Governor's office directly against the Federal Judiciary."

His most recent involvement occurred in the Fall of 1972 when he, although a member of the U.S. Court of Appeals for the 5th Circuit, attended a meeting of the Atlanta Action Forum. At that meeting he suggested to Branch President Lonnie King and the white businessmen of Atlanta present, that a way around the most recent desegregative directive from the Court of Appeals, was to abandon lawyers and for the parties to meet directly in settlement talks. This was done and a so-called compromise was reached, which the National NAACP repudiated as being inconsistent with constitutional requirements.

What Bell, therefore, had suggested was unconstitutional, i.e. even though the court had ruled that the school system must be completely desegregated, if you could get the plaintiffs to agree to anything less, the courts would then be required to agree. In other words, you cannot force constitutional rights on someone who says he does not want them.

University of Georgia: Charlayne Hunter-Hamilton Holmes

On September 24, 1960, the Federal District Court ordered the University of Georgia to admit two black students, including Charlayne Hunter, now a reporter for the New York Times. On January 9, 1961, the Fifth Circuit directed immediate admission. *Holmes v. Danner*, 5 RRLR 1069. Vandiver directed the state Attorney General to ask the Supreme Court to delay integration, (SSN, February, 1961, pp. 1, 8, 11), and attacked the District Court for a "shocking . . . usurpation" of state's rights. The Supreme Court denied the requested stay. On midnight of January 9, 1961, Vandiver cut off all funds to the University and closed the school: this was apparently required by state law in the event of integration, and Vandiver asked that the law be repealed. (5 RRLR 1092, 1094.)

On January 12, 1961, the District Court ordered Vandiver to resume paying funds to the University. (5 RRLR 1096-7.) The University then suspended the two blacks, but the District Court immediately ordered their reinstatement. (5 RRLR 1096-7.)

Conflict of interest

There has emerged a pattern of conduct which suggests extreme indifference to conflict of interest situations. How widespread this is in the Bell record cannot be ascertained from the somewhat narrow civil rights focus of this inquiry. Nevertheless, it is clear, that in at least three instances, Judge Bell appears to have failed to display the degree of propriety that the Canons of Judicial Ethics call for.

Atlanta School Case

Considering the fact of Judge Bell's long involvement with this dispute, commencing prior to his judicial responsibilities, Judge Bell should have declined to serve as the Circuit Judge member of the 3-Judge Court considering the metropolitan branch of the Atlanta case. Most certainly, after his speech to the Atlanta Action Forum during which he discussed, (even if only briefly, the metro case) Judge Bell should have granted the motion filed by Attorney Margie Pitts Haimes and recused himself.

Parrish and Alabama Black Lawyers Association, et al v. Alabama State Bar—December 4, 1975

This lawsuit, brought by the Alabama Black Lawyers Association, was assigned to District Judge Varner, a former President of the State Bar Association. The Black Lawyers Association filed a recusal motion which was overruled by Judge Varner.

When the Black Lawyers Association appealed this issue to the 5th Circuit, Judge Bell voted to affirm the refusal of Judge Varner to recuse himself.

Gold et al v. Biscayne Bay Yacht Club et al

This case arose in U.S. District Court in Miami, Florida, when Harold S. Golden and David Fincher, a Jew and a Black, challenged the racial exclusion policy of the club in view of a lease that existed between the city and the club.

The District Court ruled that the lease brought the club within the ambit of the Equal Protection Clause of the 14th Amendment. Consequently, the club was enjoined from excluding Jews and Blacks.

On appeal to a panel of the 5th Circuit, the District Court was affirmed.

However, with Bell participating a rehearing en banc was ordered and the appeal presented once again. Bell again participated, voting to reverse the District Judge.

His membership in three racially exclusive clubs, revealed since his designation as Attorney General, raises the question of the propriety of sitting and passing on this matter.

THE CASE AGAINST GRIFFIN BELL

Many disturbing questions have emerged in the aftermath of President-elect Carter's designation of Griffin Bell as Attorney General. Bell has seriously compounded the uneasiness by what can only be described as flagrant dissembling in the hours since his designation.

During the press conference at which Carter presented him to the country early this week, Bell was extensively interrogated about a statement he had submitted in behalf of Harrold Carswell's Supreme Court nomination. He was asked whether his endorsement had followed public disclosure of a rabid segregationist tirade Carswell had delivered earlier in his career. This was Bell's reply:

"I didn't endorse him. I wrote a letter to the President saying I thought he was qualified to be on the Supreme Court. I don't think a judge ever endorses anyone. We're not in politics. I wrote a letter about his ability and his record."

We now quote the full text of Bell's letter, as published in the record of the Judiciary Committee's hearings on Carswell:

"This statement is in support of Honorable G. Harrold Carswell whom you are now considering for confirmation as an Associate Justice of the Supreme Court.

"I have known Judge Carswell for twenty-four years and have frequently visited in his home as he has in mine. I am familiar with his career as a lawyer

and a judge, and with his personal life. His character and integrity including intellectual honesty, is of the highest order. His intellect and ability are also of the highest order.

"Judge Carswell will take a standard of excellence to the Supreme Court based on many years of experience as a trial judge and the equivalent of two years as a Circuit Judge (considering sitting with the 5th Circuit as a District Judge), which will substantially contribute from the inception to that court. His particular experience cannot be matched by anyone presently on the court and will fill a need now existing on that court.

"I recommend Judge Carswell for confirmation without any hesitation or reservation whatever."

Could an honorable man describe this as anything less than a full-scale, unequivocal "endorsement" rather than what Bell sought to depict Monday as a detached comment on Carswell's competence?

Bell has now very belatedly conceded that he was "mistaken" when he told the same press conference that he was unaware of the explosive Carswell speech when he wrote the letter. His exact words on Monday were:

"It turned out that he had made a speech I didn't know about when he was running for the state legislature. Of course, I didn't know about that at the time."

But in fact, as he now admits, reminders of that speech (in which Carswell said "segregation is the only practical and correct way of life in our states") had been widely published days before Bell transmitted his eulogy to the embattled appointee. It had become a central document in the confirmation proceedings. And Bell did indeed know about it.

Thus, on two vital matters, Bell offered indefensible distortions of events while standing before the TV cameras at the side of the man who had selected him.

If he had promptly and forthrightly acknowledged the truth and deplored his misjudgment on Monday, he might have disarmed some of his critics.

He might have further redeemed himself by confessing his membership in discriminatory clubs and pledging to sever those connections. But not until 72 hours later, after his affiliation had been revealed and he had initially equivocated, did he announce that he would quit the clubs.

Beyond all the other issues involved in his elevation to this crucial post, Bell has invited deadly doubts about his integrity and credibility. There could hardly be graver reason for challenging his fitness for the role of Attorney General.

Senator KENNEDY. Well, Mr. Mitchell, you never mince your words. You did not today. You always speak with very great passion and authority and forcefulness. You have done so in your comments here today. As always, we welcome your appearance, and we value your statement.

Speaking for myself, we are very mindful of the responsibilities we bear in this particular nomination process. I think all of us are attempting to do the best of our ability to meet those responsibilities and will continue to do so.

In your statement I would like for you to elaborate—but before getting into that, let me ask one question.

Having made the statements that you have in terms of your own observations and characterizations of Mr. Bell's record in the area of civil rights, why is it that we do not have on our witness list here more of those who have experienced the pain and the lash of the suffering and the indignity which has been experienced in not only that part of the country but I suppose in my part of the country as well?

Mr. MITCHELL. I think part of the reason is the speed with which these hearings are being held. That is the reason I suggested, and I believe others will suggest, that they be held in a more orderly way after the President-elect sends the nomination over officially.

The second reason is that we have to face the fact that many of the blacks of this Nation are turned off on the processes of government under which we live.

When we went to the U.S. Supreme Court in 1954, the lines stretched all around that court. The first time I ever presented testimony to a Senate committee was in 1933 which was my eyewitness account of a lynching. The hearing room over in that old caucus room of the Russell Office Building was jammed.

But again and again people have turned out. They have stood in lines. They have waited. They have petitioned. Then those in power have gone on to do what they had intended to do in the first place.

The ranks of those of us who continue to have faith in the processes of government are thin. I will be in those ranks until I die. That is why I am here.

But I can understand why many, many who are the victims think it is a waste of time to come to meetings like this, and I am sorry to say that if they had heard the proceedings that have gone on here, it is my opinion that they would believe that the reason for being turned off has been affirmed.

Senator KENNEDY. Some have been prepared to take the trip and to support Mr. Bell's nomination.

He indicated that in response to questions which were asked of him, and he said to ask the people in the areas where he is from.

There are those who are blacks and who are on this witness list, and to my own awareness and knowledge have suffered and experienced the kinds of indignities which you very eloquently commented about. They are here to speak in his behalf.

What weight are we supposed to place on that? Evidently they have heard, and they are prepared.

Former presidents of your organization and others are prepared to speak and others who have been extremely active in the whole cause of civil rights. Others, who are not here are on this witness list, whose record includes the March to Selma, and Andy Young and others have commented favorably.

These are men who certainly have had a long and a continuing commitment.

I am interested in what value we should place upon their testimony.

Mr. MITCHELL. Let me tell you this little story, Senator Kennedy.

When the bus controversy arose in the State of Alabama which projected Dr. Martin Luther King and the Reverend Abernathy into the national limelight, there was, as you know, a great disturbance. Then there was a proposal of a settlement. The settlement proposed was that blacks would fill up from the rear of the bus to a designated place, and after that it wouldn't be necessary for them to stand and give a seat to a white person as the previous law required. The previous law required that if a black was sitting in a seat and a white person was standing, the black had to get up.

Well, those who were involved in that controversy first agreed to accept those terms. It was the NAACP which pointed out to them that this was a shameful way and that their glorious efforts should not be settled in that manner.

The Reverend Mr. Abernathy in explaining why they accepted the position which the NAACP proposed said this. He said that there was a boy selling some puppies which had just been born and he was selling them for 25 cents apiece. Three or four days later, a person came by and the boy was selling them for \$1 apiece. The person asked him why there was an increase in price, and the boy said that when they were 25 cents they didn't have their eyes open; but now their eyes are open and the price is higher.

I say the reason why these people are up, and I know who they are and I know the standards that they set, is that they have had so little and have been so used to living under unfortunate conditions—I know because I lived in Atlanta and get down there frequently—to them anything which gives a scintilla of hope may look good. So I am not surprised that they can be assembled. I would say that it is unlikely that they would have been assembled if we hadn't had this opposition.

And I would say to you: "Ask yourself what is the proper standards by which you would judge the evidence in this case." If there had been a record of a nominee in which he had said that all Catholics shall be barred from the public schools and if there had been a nominee who had said, whatever religious faith these other gentlemen are identified with, "You cannot have the same kinds of rights of other citizens," then would you feel that this was a suitable nominee?

You do not need any explanation of why there are some blacks who will come up here and be for him. The measuring rod and the rule, it seems to me, ought to be what is right. And no matter who says to the contrary, but this record on its face says that it is not right to put this person as the Attorney General for the United States.

Senator KENNEDY. Mr. Bell has called himself a moderate. During the course of the questions, he admitted that his actions under Governor Vandiver meant delay of desegregation. That is his testimony and his statement. He says that that was the price of orderly desegregation. He has indicated that.

He has indicated that this was his position during that period of time. I don't think he has made any representations of anything else. I think, obviously, there are questions that have been asked him about those particular questions, whether it was his attitude or the actions.

That is what his testimony is before this committee, but he also placed himself, in his response to questions, in the belief in the Voting Rights Act and the full enforcement of all of the civil rights laws, to attack discriminatory zoning, to fight against laws to prohibit the courts from using busing as an equitable remedy, to insist that the agencies of Government are going to provide in the areas of equal employment and themselves not participate in any of the areas of discrimination.

That has been his testimony before this committee.

What value do you place upon those assurances which he has given to this committee? Particularly measured, I suppose, against a record just in terms of basic integrity that has not been questioned?

Mr. MITCHELL. I am sorry to say I place no value on it. I will explain why.

First, my great and good Senator from the State of Maryland referred to the turmoil that was avoided in our State when the schools were desegregated. I was an active party in that. I took my second son, who is now a distinguished doctor, to the school by the hand; and when I got there, there was a National Association for the Advancement of White People parading and saying, "Niggers, go back to Africa."

Somebody punched my son in the eye, and I made my decision that I was not going to leave that spot. I got my ticket signed, and I counter-picketed until the authorities came in and took everybody away in a patrol wagon.

We were able to settle the problems of discrimination in the schools in Maryland, not because the people there are any different from the people of Georgia but because, as Senator Mathias has indicated, we had a Governor who had the courage to lead the people the right way.

They did not have that kind of courage in Atlanta. They catered to the mob. So I have no sympathy for those who say: "Well, it was the temper of the times, and that is why we had to do it."

Then with respect to the second part of your observation, about being able to believe the assurance of a person that he will be different, let me say this. Let us say that you had a precious jewel in a museum and that there was an individual who was identified with the removal of that jewel, and with putting in a place where it was not available to those who really owned it, but later came in and said that they were sorry that they did it, and that they promised they would never do it again.

The question is that you might believe him, but would you hire him to be the night watchman in the museum?

We have a precious jewel known as freedom. It is a jewel which is our right under the Constitution to be treated as equals under the law.

Mr. Bell may not have actually removed that jewel, but he made the plan and the program under which it was removed and was permanently withheld from some of those who were supposed to benefit by it.

It may be that he is reformed. I am not convinced. But, assuming that he is, it seems to me that the Government of the United States, as evidenced by the members of this committee in the Senate of the United States and the President of the United States, should not make him the watchman of the jewel of freedom.

Senator KENNEDY. You point out in your testimony that there are those who profess to be reformed but who in fact still seek ways of turning back the clock or slowing down progress, and that from the record it appears that Mr. Bell is in this latter category, "who still seek ways of turning back the clock."

Do you want to elaborate on that in terms of any recent actions?

Mr. MITCHELL. I did when I cited the *Cisneros* case of 1972 and which Mr. Bell said is really the object of his paternity and that it has the name of Judge Dyer on it.

I attempted to explain the mischief of that case in that it admitted that the people were victims of discrimination but offered them no real remedy. If that is not turning back the clock, I think it is and I am supported in that position by other judges who felt that it was an outrage.

If you want any further information on that particular case, I would certainly defer to counsel here if you want to ask him.

I also feel that his actions in the *Atlanta* case, which is of recent origin, with the act of advising plaintiffs that they should come, and specifically instructing them not to bring their lawyers, in further support of his unchanged position.

[The official reporter indicated a request for a momentary pause while he changed a tape.]

Mr. MITCHELL. In the interim, while we changed the tape, general counsel has given me information explaining the seriousness of Judge Bell's intervention in that *Atlanta* case. I would appreciate it if you would let him tell you what he was telling me.

Senator KENNEDY. That is fine.

TESTIMONY OF NATHANIEL R. JONES

Mr. JONES. It appeared that the mandate of October 6, 1972, from the panel of the fifth circuit to the Atlanta School Board required that there be immediate integration of the system as a whole. This meant that the identifiable white schools that were being isolated in this system would have to become a part of any plan. This caused great consternation in the Atlanta community.

Consequently, the meeting was held at the Atlanta Action Forum. When the suggestion was made that a way to avoid meeting that mandate—the mandate would have to be met; but there was a way that it could be avoided. That would be for the parties to meet without their lawyers and to work out a settlement.

At that time there were indications that the Atlanta board, realizing that their back was up against the wall and the moment of truth had come, was prepared to enter the metro issue aspect of the case. This meant that the Atlanta board would have intervened on the side of the black plaintiffs to bring the suburbs in so there could have been a metropolitan solution to the problem.

This suggestion of a compromise aborted that effort and that intention by the Atlanta School Board and resulted in a compromise which left 80 percent of the black children in schools that are 90 percent or more black. There were some 3,500 students involved in the compromise plan and pupil reassignment; 2,700 of them would be transported, of whom 1,951 would be black.

This placed a disproportionate burden on the blacks. It did not meaningfully alter or in any way reshape the segregated pattern of the Atlanta schools. This prompted a motion to intervene by a number of parties.

In fact, the attorney for the intervening plaintiffs in the suburban case moved to have Judge Bell recuse himself because of his speech to the Atlanta Action Forum. He overruled that motion of recusal.

TESTIMONY OF CLARENCE MITCHELL—Resumed

Mr. MITCHELL. There is a third reason I mentioned which had to do with the case of *Golden, et al. v. Biscayne Bay Yacht Club*.

That is contained in a memorandum which I submitted, and it was prepared by Mr. Jones. It is only four paragraphs, and I would like to read it.

This case arose in U.S. District Court in Miami, Fla., where Harold S. Golden and David Fincher, a Jew and a black, challenged the racial exclusion policy of the club in view of a lease that existed between the city and the club.

The District Court ruled that the lease brought the club within the ambit of the equal protection clause of the Fourteenth Amendment. Consequently, the club was enjoined from excluding Jews and blacks.

On appeal to a panel of the Fifth Circuit, the District Court was affirmed.

However, with Bell participating a rehearing en banc was ordered and the appeal presented once again. Bell again participated, voting to reverse the District Judge.

His membership in three racially exclusive clubs, revealed since his designation as Attorney General, raises a question of the propriety of sitting and passing on this matter.

As I have said, under the rules, judges are at least supposed to inform the parties of his interest.

In the questioning about whether he is still a member of those clubs, I listened very carefully. I did not hear the judge say at any point that he is not now a member.

I understood him to say that he would give up his membership. The press, however, has carried many, many stories which say that he has already given up his membership. This is another question about whether, when responses are given to questions, you get a full answer to those questions.

Surely that could be cleared up by asking him if he has in fact given up his membership, or is he holding it in abeyance until these proceedings are disposed of.

Senator KENNEDY. I would like some of my colleagues question you, Mr. Mitchell. I want to thank you for your presence here and the comments you have given. You have given a great deal of food for thought here in your testimony and your additional remarks.

I again want to express appreciation for your presence and for your testimony.

Mr. MITCHELL. Thank you.

Senator KENNEDY. Senator Mathias?

Senator MATHIAS. Mr. Mitchell, I want to join with Senator Kennedy in welcoming you again to this committee.

You have always been very helpful to us.

When I was discussing with Judge Bell his judicial record, I pointed to certain decisions in which he had participated. I said at that time, and I think it is a fundamental principle that we ought to be mindful of, that under normal circumstances a judge ought never to be questioned about opinions that he has rendered in court; but, when he changes his character as judge, then those opinions become evidential in determining what his views are on a particular subject.

I raised certain cases with him. He said, and I think it was a fair observation: Yes, you raise questions about these decisions; but you are not mentioning the hundreds which I have participated in dealing with school and civil rights questions. There are hundreds of them which are apparently being ignored by this committee.

I assured him that they were not and that the basis of his record as a judge was certainly one of the reasons that he was here at all.

But I think it does raise a very serious question for us. We have criticized a couple of cases. The Supreme Court has reversed him on those cases.

What about all the school cases on which he has ruled?

MR. MITCHELL. Well, I would say the general counsel is here. Here is our authority on those matters. I would defer to him to answer that question, if he would permit it, Senator Mathias.

MR. JONES. Senator. I think the bottom line to the analysis of Judge Bell's decision, particularly in the school area, was set forth by the minority judges in the *Cisnero* case. That is that his writings indicate—

Senator MATHIAS. Will you give us the citation to that case?

MR. MITCHELL. I will get it in a moment.

MR. JONES. His opinions suggest a minimizing of the breath of remedy and maintaining to the greatest possible extent the prevailing existing segregated pattern.

That seems to be the bottom line. That is his invoking of a series of steps in between the proof of violation and one's entitlement to ultimate relief.

MR. MITCHELL. The citation is 457 F. 2d 142. The date is 1972.

Senator MATHIAS. You have cited me one case. We are dealing with a body of a very large number of cases.

Are you trying to characterize?

MR. JONES. Yes. We cited *Cisnero* because we think in the context of our particular concern of what the issues are today, school desegregation, particularly in the urban areas, the frustration that courts and minorities feel with respect to obtaining relief, it is awfully important that the role of the Government be one that will affirmatively move for the vindication of those rights.

Senator MATHIAS. In these cases did not Judge Bell render decisions, issue orders, write opinions which supported the rulings of the Supreme Court in this area?

MR. MITCHELL. May I just say this, Senator Mathias?

We would not have brought up the *Cisnero* case; indeed, we would not have cited that as an example of the judge's philosophy. But at the press conference when he was nominated, it was he who said: My views are set forth in that case. It has Judge Dyer's name on it, but it is my point of view on how to handle these desegregation cases.

So out of his own mouth we have the statement that this is his point of view on how these should be handled. If he has some modification of that point of view, we ought to have it. But it seems to me we have no obligation to try to exculpate him when he himself has said that this represents his total point of view.

Senator MATHIAS. Now, he apparently tried a great number of school cases in the State of Mississippi.

Have you looked at those cases; that is, as a body of law?

MR. MITCHELL. I had better let Mr. Jones answer that.

MR. JONES. I think the result in those situations is what leads to the common conclusion of a mixed record. There again you find the imposition of layers of proof and obstacles which often must be overcome before one goes from violation to remedy.

It is the same pattern.

Senator MATHIAS. But you are familiar, that is, your testimony is that you are familiar with those cases and opinions?

MR. JONES. Yes. We have not read all of his opinion, but we have looked at what we consider to be significant decisions and those where

he expresses himself at some length and where the relief, we thought, was not as adequate and not as prompt as the case seemed to indicate.

Mr. MITCHELL. We would be glad to provide a memorandum on that, Senator Mathias.

Senator MATHIAS. I think it might be helpful if you would do that.

Mr. MITCHELL. I must say that we are happy to do it, but I must say that, in my memory and in my experience, this is the problem that blacks face. There always must be some additional evidence presented to show that they are giving a bona fide body of evidence about a problem that the whole world knows exists. But they must support their position with chapter and verse.

Knowing you as I do, I know you asked that in all fairness and with the highest purposes in mind. But I will say to you that it is only because I have rugged and indestructible faith in our Nation that I am not dismayed by that kind of obligation we have to meet.

I believe you have to fight for your rights. I have fought for them all my life. I will continue to do so. But if we want to reassure the weak and if we want to give those who have been denied rights and remedies for so long the assurance that they can get redress, then it would seem to me that we must at some point recognize that when there is convincing evidence, the burden of proof shifts from those who are making the case to those who are trying to say that they are not guilty.

Senator MATHIAS. I hear what you are saying.

I do make that request. I know you do feel that it is a sincere request, but I make it because we have positive testimony now before the committee as to this body of caseload. It has been put forward as part of the positive record in which Judge Bell's nomination rests.

We will attempt, to the extent that we can ourselves and the committee staff, to look at these cases. But I think they now become a part of the whole record on which we have to make a judgment.

That is the reason I make the request of you, not to add any special obligation to you, but to have you share with the rest of us what we are going to have to plow through before we make the final decision.

Mr. MITCHELL. We are happy to do that.

Senator KENNEDY. That will be placed in the record at this point.

[The material referred to had not been received at the time the hearing was printed.]

Senator MATHIAS. Did you happen to hear Judge Bell's comments and his testimony on the question of access to courts?

Mr. MITCHELL. I do not believe that I did.

Senator MATHIAS. Well, I was going to ask you what your reaction was. He was very positive in his statements on that.

Mr. MITCHELL. I would say that—

Senator MATHIAS. It was in dialog with Senator Kennedy. Go ahead.

Mr. MITCHELL. I did not hear what he said; but I will say to you that there seems to be a tendency on the part of the Federal judiciary, starting with the Supreme Court and going down to the district courts, to try to discourage people from bringing in legitimate grievances. It is done in a number of ways.

It is done by making the trial so long and the process of getting to trial so cumbersome that many times those who are in need of a remedy are too old to enjoy it after their case is won.

Then, as has been evidenced in some of our States, I am sorry to say including our own State of Maryland, an attitude on the part of the Federal judges which seems to say: What are you doing in court taking up our time with these kinds of cases?

They almost act as if you are committing some kind of an insult when you come into court. If we are to preserve the judicial system of this Nation, people ought to have faith in it. We have got to have easy access to the courts for those who have just grievances. We have to have the facilities for adequate defense by competent lawyers.

We have to have judges who will act like judges and not like persons issuing press releases for the newspapers to show how terrible it is for those who are trying to get their civil rights vindicated.

I did not hear Judge Bell's response to an inquiry if it dealt with that matter. But I would say that if he feels that we must take care of that kind of a problem, then I would say that that would be the one bright light in the whole body of words that came before this committee.

Senator MATHIAS. I think maybe we have found some ground of common agreement with Judge Bell, Senator Kennedy, yourself, and myself. I never overlook an opportunity for passage of a bill. I want you to look at S. 35. This is the Civil Rights Improvement Act.

It deals with this question of improving the ability of people to get to the courts. It deals with the recalcitrance of the courts in recent years to address themselves to these problems. It deals with the exhaustion of remedy.

I think it will reverse the trend that you have perceived and I have perceived and apparently Senator Kennedy has perceived in the courts to make it more difficult for people to get to the courts.

That is by way of an aside.

Mr. MITCHELL. I have no intention of embarrassing you or Senator Kennedy or Senator Bayh. But let me say something laudatory about you.

It seems to me that in the context of the argument that a man is the victim of his environment and the emotions of the times require certain unworthy conduct, you three are living examples to the contrary.

Senator Bayh took positions in Indiana with regard to the Carswell and Haynsworth nominations. It was not possible for him to gain great popularity standing for the full vindication of the rights under the 14th amendment in school cases. But you took that position against calumny and other kinds of insults.

You appealed to the people of the State of Indiana. They returned you to the U.S. Senate.

Senator Kennedy, you know all too well that in the controversy involving the Boston school case, there were times when many of us felt that your personal safety was in jeopardy. I am mindful of the time when you had great difficulty just getting to your car because somebody had let the air out of the tires. From my understanding, they had surrounded it so that you were in real physical danger.

You stuck by your position. The people of Massachusetts have sent you back to the Senate.

We in our family, some of whom are Democrats—I happen to be a political independent myself—we love Senator Mathias because our knowledge of his courage goes back to the time when he was a city

official in his hometown. There was a theater there which was owned by the town but which had a segregated racial policy.

My good wife, who is a lawyer and was a lawyer at that time and the attorney in that case, first told me about his statesmanship when he, as the legal adviser for the community, said: We have no right to keep these people out because it is a violation of the 14th amendment.

Accordingly we won without the long and costly litigation. Ever since he has been in the Congress, in the House of Representatives, in the Senate, he has been in the middle of the great controversies that we have had; he has always stood up for what was right.

In his last campaign for the Senate there was an opponent who tried to raise the bussing issue. That opponent went on television. I will never forget it. He said that if that opponent had been in the Senate of the United States, the opponent would not have voted as Senator Mathias voted on an issue which he voted for.

But in spite of that, he won the election.

I am happy to say that my oldest son, who is a member of the Maryland Senate, and my grandson, who is possibly a future Governor of the State of Maryland, went out on the streets. They are Democrats, but they went out on the streets and campaigned for Senator Mathias, a Republican.

I will always cherish all of you in my heart for your courage, your statesmanship, and the example that you set for the country. I only hope that others will follow.

Senator KENNEDY. We have a 15-minute rule here but unless there is objection we will not count those last 4 or 5 minutes on Senator Mathias' time. [Laughter.]

Senator BAYH. You may count it on my time.

Senator MATHIAS. After that, I will stop.

Senator KENNEDY. Senator Bayh?

Senator BAYH. Mr. Mitchell, I thank you for that thoughtful eulogy.

I look to you as a colleague in the legislative art of trying to make our Government function to serve people as well as looking to you as a friend. I do not know any one person that it has been my good fortune to work with who has done more than you have, sir, to sharpen up my sensitivity to some of the common concerns we have.

I refer to all of our citizens regardless of where their ancestors came from, what their bank account might be, what their sex might be, where they go to church; they should be treated equally.

I see this sensitivity sort of as a growing thing. Perhaps all of us, as we have new experiences that we have not had before, will become more sensitive to the plight and concern of others who have lived with these experiences.

Your opposition to Judge Bell troubles me because I know the depth of your concern and your sincerity. I know that when people like yourself and organizations such as that which you so ably represent, the NAACP, do battle—even against the windmills, on occasion to windstops—it is because of that willingness to fight seemingly unbeatable foes and I consider it matter of some pride to be a life member of the NAACP and in my own small way to lend sanction and sustenance to those continued battles.

I think I know you well enough to ask you some of the same kind of questions that you would ask me and have asked me.

I think it is important that we not convey to the country the desire to rush something through in an effort to try to keep something from being brought to light. I am a bit concerned that you feel that is what we are going. I am not sure you used the term "railroad." You may have.

I wonder if that is really fair? Are you familiar with the precedents over the time when we have had periods of transition where we have had new Presidents and new Attorneys General? My memory and personal experience goes back only to 1969 and 1961.

What procedure was used in those periods of transition, as far as getting the nominees prepared to do duty?

MR. MITCHELL. As far as I can recall—and my memory would go back to Francis Biddle as Attorney General under President Franklin Roosevelt—the procedure that you now use has been used before.

I took the trouble of trying to find out whether it was sanctioned by the Constitution, and I was advised that, under the theory that the Senate is a continuing body—a theory with which I do not agree—that this committee has the power to conduct its administrative duties and its administrative duties permit it to receive these nominations. This is so even though the source from which they come is not identified and not ascertainable.

But after the hearings are completed, the matter then would go to the Senate if when the President takes office he sends it in the proper form. Then, as I understand it, it has been contended and indeed possibly would be done this time, that with the nomination officially before the Senate, as the Constitution would require, the Senate would then have a vote. But the vote would be based on the record which had been compiled under the administrative procedure.

It seems to me that the serious constitutional question arises on whether the opportunity for the Senate to advise and consent on a nomination has been adequately met when a committee which has, as is the case here, members on a kind of probationary basis. I believe it was Senator Heinz who said that it was by "the luck of the draw" that they got assigned to the committee.

I wonder whether the Senate really has an adequate opportunity to advise and consent in a situation where, as here, serious questions have been raised about whether the nominee has attempted or been a party to efforts to deprive people of their constitutional rights.

I did not use the word "railroad," because that would not adequately describe the situation.

This hearing, in my judgment, is moving on jet speed and entirely too fast because of the seriousness of the situation. It does seem to me that it ought not to continue and that it ought to be postponed and held when the President of the United States, after being duly installed in office, sends the nomination over in an orderly way, and the Senate under its rules refers it to the jurisdiction of this committee.

Senator BAYR. Let me say that it is important. Everyone is entitled to their own opinion. I, as a matter of practice, waited to make a final determination on all nominees until after the hearings are over so that all the evidence can be heard. I think it is important for us to understand that we can have differing opinions on what the results or procedure should be to be followed without going to the motivation involved.

I asked the question just to point out that, although you make a very good case that this should be put over, as one who has fought sitting here in that chairman's chair or next to it at 9 o'clock at night for you to have the opportunity to be heard before other hearings that have been held. what we are doing now is the same procedure that has been followed in similar circumstances since you can remember, and your memory is better than mine.

So perhaps you might conclude that it is not good precedent to follow now, but it is not something new and novel as far as this committee is concerned.

Mr. MITCHELL. It is not new, but we have never had, to my knowledge, a record so clear on attempts to abrogate constitutional rights on the part of the nominee. Indeed, so far as I can recall, these nominees who were processed by this method were not in any way controversial. There might have been questions about their point of view on something, but so far as I know there was never any substantive charge brought that the Attorneys General of the United States, again starting with Francis Biddle and running up to John Mitchell and Kleindienst, so far as I know, it was never a question about whether they had engaged in the process by which people were denied their constitutional rights.

There was a lot of disagreement about their views on various subjects.

Senator BAYH. Let me suggest that the two examples that you mentioned hardly give us cause to believe that we are going to guarantee the results of a good Attorney General just by changing the procedure.

I do not want to pursue this at length. From my own standpoint, I feel that the precedent is not out of line. I do feel we have a responsibility because of the questions that have been raised and that we each should pursue it until we have answered that in our own minds.

I am laboring under no false delusions. I do not suppose there is any way—you were very complimentary. I appreciate that. I would like someday to be able to deserve it. I remember some conversations you and I had in my office on the Carswell matter that showed that I was not fully sensitive to how people would perceive this. I think maybe I have come a "fer piece," as we would say in southern Indiana, since then. I still think that I have a ways to go.

I do not think there is any way that a person who is born and reared in a farm community where there is not a black person in the township that is white middle class can ever be fully cognizant of all the problems of some of the people whose battle he has tried to fight.

So I hope you would forgive me if the time would come when I might come to a different conclusion. I am using a different set of sensitivity, try as I will. I am going to try to do what I think is right.

It seems to me that you propound perhaps an accurate—I do not know, I have no way of judging this, but certainly it is an interesting political philosophy at the beginning of your testimony when you pointed out the tremendous black support for Governor Carter. There is no question that without that he would not have been President. Maybe you are right, if this nomination had been sent up, then he might not be there. I do not know.

I do not know how any of us can reasonably judge that; perhaps you can.

It seems to me the question we have to ask ourselves is not how this nomination would have affected the outcome of the election. The one question we have got to ask is whether Judge Griffin Bell is going to be a good Attorney General or not.

We can look to past history, I think, as one of the tools to use. But even then, let me say this. I am concerned about some of the things in Judge Bell's past record. I expressed those concerns to him.

The question is not whether if you were Governor of Georgia you would have appointed him as your chief assistant or whatever the official capacity was. It is really not whether if you were President of the United States or a Senator from Georgia you would have seen that he was a judge.

It seems to me the question we have to ask right now is whether he, as Attorney General of the United States, would do the kinds of things to protect civil rights of the citizens of this country that you and I are concerned about.

I have talked to a lot of people down there in Georgia that I respect. They are people by the name of Kalen and Morgan and others who have stood up.

All of those people I have talked to say that they thought Judge Bell had a sensitivity which convinced them that he would be a good Attorney General.

You mentioned that he had evaded important questions. What questions do you mean? I want to go back over this record. What questions did he evade?

Mr. MITCHELL. Well——

Senator BAYH. He may not have answered in the way you or I would like it, but what questions?

Mr. MITCHELL. It seems to me to be implicit in every one of his answers about his role as the chief of staff, it was kind of an evasive, offhand description which made it look like it was something of no importance.

And yet here we have the record of all these things which are attributed to his legal genius. His memory failed him on so many occasions when questions were asked. It seems to that in one's life, if you are engaged in something which is as important as he said it was in those troubled times, that it would indelibly brand it on one's memory. You would not forget it.

Then, as I said, there is the simple question as to whether he is or is not now a member of the clubs which exclude people——

Senator BAYH. I think it is very clear what he said. He said he would resign.

Mr. MITCHELL. The paper said he has.

Senator BAYH. As I recall what he said, he said he would resign.

Mr. MITCHELL. I know; and in my judgment that is not a responsive answer. It seems to me that the newspapers are being told that he resigned, and they are spreading it all over the Nation as evidence of his hitting the sawdust trail and coming to the altar to seek being shriven of his past conduct.

Surely by now I think he ought to be able to say: I am not now a member.

Senator BAYH. I do not know what the papers say. Most of the time they are close to the mark. Sometimes they miss the mark.

What they said, I do not know; but I know what he said when he was here this afternoon. He said he would resign.

Mr. MITCHELL. That is correct.

But this is what gives me a problem, the way the nomination is being handled. I preface what I am about to say about my regard for you as a person.

I was given a key to the city of Indianapolis by the then mayor, who is now the junior Senator from the State of Indiana.

Senator BAYH. Does it fit?

[Laughter.]

Mr. MITCHELL. It did fit the circumstances.

I saw that when you were up here defending the issue of the right of children to be transported to schools in a proper case, that gentleman and others organized a great campaign against you on that basis.

I promptly sent the key to the city of Indianapolis back with the letter saying that I did not know what it was supposed to open. But whatever it was, I did not want to use it because of the attack he had made on you, which I thought was unfair. That shows my regard for you.

But, as I listen to your questioning of the nominee, it seemed to me that your questioning, particularly when you brought up his role in juvenile cases and things of that sort, had the diversionary effect of taking away from the focus from the serious question that we have raised and raising him to a level close canonization about his role with respect to juveniles.

Senator BAYH. Excuse me for interrupting, Mr. Mitchell, but that was in my third round of questioning.

The first two rounds, most of it had been directed at Carswell; and I am sure Judge Bell was not very comfortable. I was not comfortable asking him. He could not just say he was totally disavowed from Carswell. I expressed concern. I understand why he could not. I would have been much more comfortable if he had.

Frankly, I think maybe you have to respect a man who is saying that here is a friend and a classmate who now is down and out under very difficult circumstances and I am not going to repudiate him.

I would have come to a different conclusion if I had been sitting there. But you cannot say now, my friend Clarence, that we did not shoot some pretty good shots at him before we got around to juvenile delinquency. It happens to be one of the responsibilities I have as chairman of the subcommittee that has seen a very important set of human programs atrophy because of inaction on the part of this administration.

You give us an Attorney General who is sensitive to that, who will put human resources out in those communities to help the kind of people you and I want to protect the constitutional rights of. I think we can put him on the straight and narrow and keep them out of the prisons. That is pretty important to me. If I think it is more important than you do, you forgive me; but I think it is important. That is why I asked that question.

Mr. MITCHELL. I am not questioning the importance of it. I am questioning the context in which it arose.

In my life here in Washington, which has been enriching in many ways, I have seen the rise and fall of the civil rights responsibilities of the Democratic Party. It seems to me the Democratic Party was especially aware of its civil rights responsibilities when the Nixon and Ford administrations were in power.

It seems to me that if this kind of nomination had been made by either Mr. Nixon or Mr. Ford there would have been almost unanimous and immediate Democratic opposition to it. Now I get the unhappy feeling that, while we are holding these hearings, there is a kind of a coalescence of the Democrats. Because of the coalescence, they may be willing to be charitable in their assessment of this terrible background of the nominee.

Senator BAYH. Let me suggest that, although I have said that there are things that Judge Bell has done or been associated with in the past which I wish were not there, I am not prepared to judge him quite as harshly as you are.

When you look at the Calhoun decision which happened back in 1959, you say in light of today that it is almost comical. I do not see how we can judge this man or those cases in light of today, because our hindsight is so much better. We have to judge it in light of the circumstances at the time.

The circumstances of this time do not see a Ford or a Nixon in the White House. They see a fellow named Carter in the White House.

He made a number of significant commitments to the black people of this country. I happen to believe he meant them. I think they believe he meant them. I think he still means them.

It is inconceivable to me that a man who I believe is committed to seeing that equal opportunity is available in increasing amounts until ultimately we wipe away all those vestiges of second-class citizenship, how a man can sit in that oval office and appoint and work with an Attorney General who is not operating under his direction to accomplish those goals. This is despite imperfections in the past as a result of however you might want to describe the circumstances.

It seems to me this is one of the major differences. We have a President who is committed to justice for all of our citizens and equality for all of our citizens and who believes Griffin Bell has what it takes to do the job. Judge Bell himself has made those commitments now.

You are now easy with him because of the past. I can understand that, but I think we have a little different circumstances.

Excuse me; I interrupted.

Mr. MITCHELL. Let me say this. I say it slowly with every intention of not offending you or Judge Bell—

Senator BAYH. Mr. Mitchell, you will not offend me. Lay it on me.

Mr. MITCHELL. Or the sensitivities of the people in this room.

If we had a situation where a nominee who was going to be the Attorney General of the United States had been involved in a circumstance where some people had gotten together 10 or 20 years ago and carried off a successful embezzlement of funds in a bank, or if we had a situation where a nominee had, at one point or another, been involved in some kind of proposition which violated the antitrust laws of this country, then it is difficult for me to believe that the lapse of

time and the declaration of a change in his status would satisfy the members of this committee.

The difference between you and me is that I think that, whatever may have been Judge Bell's role in this situation, it was the stealing of the precious constitutional rights of thousands of black children. It was carried out in an atmosphere which had the collateral effect of causing people to lose their homes and even causing people to be killed.

I cannot see how the lapse of time cures the terrible nature of those events. What I do concede is that the people of this country ought to know the full story of those events and the extent to which Judge Bell himself was involved in the planning, the execution, and the furthering of the schemes that brought this about.

I do not think we have that yet. I believe we could get it if we had a longer hearing and if we had more witnesses. That is the reason why I feel that, in spite of our friendship and so far as I am concerned my high affection for you, there is a deep gulf between us.

I am convinced that you could see immediately the problem if this case involved, as I have said, the wrongdoing involving material things. But every time you say that this is something that happened a long time ago, it convinces me that your assessment of this set of circumstances is different from mine.

I have been the victim. I know the victims. I know what it is to be in jail at midnight because you go through the front door of a railroad station. I know what it is to be with your friends one week and find out the next week that they have been shot down.

I know what it is to be on a street with John Doar and some of my colleagues when John Doar was holding back the white people, and we were trying to hold back the black people to keep from killing each other and maybe us in the process.

So to me these things have a deep and scarring memory. I cannot find it in my heart to excuse them because times have changed and years have passed. We are now asked to accept a simple declaration as evidence that the party involved has changed.

Senator BAYH. I think my time has expired. Let me conclude with one last thought and then yield to my next colleague.

I said earlier that I did not think there was any way that I could be as sensitive to some of the things that you are sensitive to. I have gone to Jackson State almost while the smoke was in the air and seen the bullet holes. I stood on a wagon bed in Green County in the hot sun and seen that school board sworn in.

I have done the kinds of things that have tried to sensitize me to this kind of thing. But there is no way; I have not walked in your moccasins, as the old story goes.

I think if we have a difference it is not that we differ in perceiving the theft or alleged theft of human rights any differently than the theft of precious jewels. It seems to me that there is no value you can put on human opportunities. I think you feel the same way.

I think we might not put the same interpretation on some of the acts. Indeed there are some people of your race that have known Judge Bell perhaps a lot longer than any of us who do not put the same value on those acts as you do.

I appreciate your candor.

Mr. MITCHELL. Let me tell you one more story.

There was a gentleman named Pickens who was in our organization who was a great one for telling stories that illustrated a point.

I do not know whether it is true or not, but he said that when elephants are captured they are put between two stout trees and chained. They pitch and they rear and pull. They cannot get free because they are chained to these trees.

After they have exhausted themselves, those who are training them can then put the same kind of chain around their ankle and put a little stake in the ground. The elephant does not move because he has been chained in his mind.

I would say, because I know many of these people who will come here to speak for Judge Bell, that they are chained in their minds. I think they act for perfectly logical reasons. I believe they come here in good faith, but they have been for so long under a system where second-class citizenship is a way of life that in their minds they believe that is right.

So when the proposition is made to them, as it was made in Atlanta, that they can continue to have segregation in the public schools with a little bit of integration and that they will share in the jobs of the administration hierarchy, which was the proposition growing out of Judge Bell's suggestions then I think they thought they were getting something real fine.

I sympathize with them. I have pity for them. I do not attempt to contest their right to be here, but I would say that I hope, as you listen to them, that you are not hearing the words of persons who look at the guarantees of the Constitution and the color-blindness of the Constitution as you and I look at it.

Senator BAYH. Let me just say again that I appreciate your candor and your forthrightness. I am troubled by that aspect. There is no way, I guess, that we could determine what shapes other people's thought processes.

You may be right, but I must say that we embark on a rather dangerous path if we began to be able to believe that we can determine the wisdom and the accuracy of other people's thought processes by some criteria we apply ourselves. It is particularly so when this applies to certain members of the white community in Atlanta, a couple who I know have gone to jail for doing some of the same kinds of things that you were doing a lot before I was sensitized to it.

Mr. MITCHELL. Let me just say, Senator Bayh, that my counsel has reminded me that every one of these great efforts that we have made have produced those who were fearful and cautious and who have said we should not do it.

When we were trying to equalize the salaries of teachers years ago, there were teachers who said we should not do it because they would get fired. Some of them were down in the State of Georgia in the city of Atlanta.

When we embarked on a program of trying to achieve a declaration that separate-but-equal was not a constitutionally sanctioned remedy, there were those who said: If you take that case to the Supreme Court, you will set the clock back to *Plessey v. Ferguson*. But we took it and we won.

So we expect that always there will be the cautious and perhaps the restrained who will say that what we do is not right and that

we are not being fair and that we are unjustly judging those against whom we speak. But that is the price of leadership.

I am sure all of us have paid it in the past, and we will continue to pay it in the future. I am not at all dismayed if 1,000 or 10,000 or 1 million differ with what the record shows as to the accuracy with which we say what the Constitution requires.

Our position is based on the solid rock of faith in the plain-spoken words of the Constitution. There are no combinations of hosts, winds, no bad gales, no storms that could make us doubt that this is right.

Senator BAYH. I will stop trying to have the last word. Thank you.

Senator KENNEDY [acting chairman]. Senator Chafee?

Senator CHAFEE. Mr. Mitchell, that was certainly an eloquent presentation. You gave us all cause for a lot of thought here.

I am going to read the decision you referred to, the *Cisneros* decision, and also look into that *Biscayne Yacht Club* case that you mentioned.

The things that bothers me is the same point that has been raised before. I do not suppose that there is much more that can be said about it. That is that those who were on the scene who I understand are going to testify. Mr. King and others, apparently are going to testify that they thought Judge Bell did a fair job under the circumstances.

As I understand your comments on it, and I do not want to put this harshly, but I get the suggestion from you that they sold too cheap, that they settled too easily.

Mr. MITCHELL. I would say that I fully agree. I wish we could find a way of saying it less harshly, but that is a fact. I feel an obligation to all who have suffered under these conditions and who have been willing to give up their properties and the futures of their children and even their lives for these ideals.

I feel it is correct to say that those who come up to testify for Judge Bell have "sold too cheaply."

Senator CHAFEE. I missed the first part of your testimony. Do I understand that not only is the NAACP national board but your various structures within your organization unanimous in the support of the position you are enunciating here today?

Mr. MITCHELL. That is correct.

Our board of directors, as I indicated by the resolution that I offered, approached this in two stages. They had an executive committee on Saturday of last week which met and adopted this position. It was thereafter submitted to our full board of directors, which is made up of people from all over the country, particularly South Carolina, North Carolina, Georgia, Florida, Alabama, and the rest of them.

They passed this resolution, which I offer for the record, which says: "We urge the United States Senate to reject the nomination of Griffin Bell."

It is preceded by some of the kinds of things that I have said in the "whereas" clauses.

Senator CHAFEE. Was that a unanimous vote, too, of the entire board of directors?

Mr. MITCHELL. Yes; it was unanimous.

Senator CHAFFEE. Well, you certainly have given us material for thought here today, Mr. Mitchell.

Thank you.

Senator KENNEDY. Senator Riegle?

Senator RIEGLE. I appreciate your appearance and your presentation. I have listened to it with great care and great interest.

My mind is open on this matter. So the things that you said I will weigh in the most careful manner.

Have you done any analysis of reversal rates on Judge Bell, on the degree to which his decisions were later overturned, particularly in civil rights cases? Has there been an analysis done that you can share with us, or not?

Mr. MITCHELL. Counsel can answer that.

Mr. JONES. That is being done by some other organization. It will be made available to the committee.

Senator RIEGLE. Is there any tentative conclusion that one can draw from what has been done so far?

Mr. JONES. I am not in a position to make that representation at this point.

Senator RIEGLE. The reason I ask is this. I know in the case of Carswell that there was a rather clear pattern of reversals in civil rights cases that stuck out like a sore thumb. I have not heard that suggested in the case of Judge Bell.

That may or may not be because the work has been done. You are not in a position to put forward the notion that there is similar pattern in his decisions?

Mr. JONES. No; that is correct.

Mr. MITCHELL. It must be kept in mind, Senator Riegle, that one of his decisions, which it seems to me is unforgivable, is that at a time when the blacks were emerging into a status where they could elect somebody to public office, he as a judge upheld the action of a legislature in ousting from office a black, Julian Bond, who had been duly and properly elected to office. It was something about his views on Vietnam.

It is hard for me to see how you could have a worse example of an improper decision which was indeed reversed. It is hard for me to see how you could have a worse form of reasoning than that which I have mentioned in the *Cisnero* case.

We recognize that maybe we have to do more work, but that is another reason for saying that we should have these hearings in a fashion that will give people time to present this kind of information. As I understand it, that involves some 500 cases. I would think that it would take a few days to analyze his decisions.

Senator RIEGLE. I do not really want to accept the burden of arguing any position in terms of the *Bond* case. I think the decision was wrong, but if I am not mistaken I think Judge Bell has also indicated that, looking backward, he likewise feels that that was wrong.

In other words, I think he is now saying that his view on that matter has changed. That does not undo what was done at that time, but I think, if I am not mistaken, he has in effect recanted that position.

Mr. MITCHELL. That is correct, but I am not sure that he has really revised his views on the voting question. A part of the rhetoric of

those who opposed the adoption of the Voting Rights Act of 1965 and the extension of subsequent years—the rhetoric was that you are singling the South out to make it a kind of whipping boy.

Why did you have to do this? We had to do it because people were being asked silly questions like: How many bubbles in a bar of soap? How many windows in a courthouse?, and were being denied the right to vote.

People were being killed when they tried to get the right to vote. Then when we proposed a remedy that has worked every time that we have gotten that law extended, the chant of the opposition has been: Why do you single the South out; and we think that was wrong.

Today Mr. Bell said that same thing when asked the question about whether he would enforce the Voting Rights Act. I do not know of anybody who has been treated in communities outside the South in accordance with the kinds of things that these people have suffered from.

It is a fact that if such treatment exists and it is brought to the attention of the Attorney General, then it is now possible to act under the law anywhere in this country. So it is fiction to say that the South has been treated in a different way undeservedly.

Senator RIEGLE. I have two other things quickly.

It seems to me that a concentrated focus of your objection to the nomination has to do with Mr. Bell's role during this period of time that he was part of this legal team working for Governor Vandiver. Apparently there is some dispute about that. It has been aired, but it continues with people putting different interpretations on that.

As you know from being here and hearing part of his testimony, his argument is that he was a force arguing for movement in the direction of redress of grievance rather than sort of stonewalling the other way. I guess those of us upon which the burden for judgment falls have to continue to try to piece together as much independent evidence as we can to try to assess what took place in terms of exactly what was done, what representations he may have made, what others can reconstruct from that period, and so forth.

I am sympathetic to your point that that period of history is somewhat more barren in terms of evidence and documentation and recollection and other things than other parts of history.

It does not go unnoticed by others in the room. That is something that I have great interest in. Anything that you or anybody else can help me identify which will piece together more fully the record at that time, however it stacks up, I would appreciate knowing, having, and being directed toward.

The final thing is—again, I just want to speak for myself because I am brand new to this particular committee and it will not last long. This is a temporary assignment, and I am not a lawyer by background. The custom has been that this is sort of the exclusive purview of lawyers.

I just want to give you this assurance. The fact that this nominee comes from the party that I belong to gives him no special advantage in my mind. If anything, I think I probably have a reflex to hold people in my party to a higher standard. There are reasons why I belong to the party I do, and therefore I expect better performance from people within my party.

I want to give you the assurance that I have no intention whatsoever of lowering what I think are high minimum standards that ought to apply for all Cabinet officers but most particularly this one.

The point you make about the long struggle that is the backdrop against which this whole discussion takes place means a great deal to me. I consider these the most serious matters that we are going to have come before us in some time. My pledge to you is that that is exactly the kind of care that I intend to bring to whatever judgment I finally reach.

MR. MITCHELL. May I say this briefly, Senator Riegle?

I know you better than you think. In the House of Representatives, you were always on the constructive side in civil rights matters. In your senatorial campaign, your opponent is the father of one of the objectionable so-called antibusing amendments. That was an issue in the campaign, and you did not duck it. You won and he lost.

Again, in terms of what is required of an official who acts either by election, appointment, or sufferance on public matters, as to what is required, you, like the other gentlemen whose names I have mentioned, are entitled to that classification. You bit the bullet. You went to the people and you won.

I would like to add this with respect to the question of credibility and candor. You asked about how this nomination came into being.

The first I heard of the possibility of this nominee coming to this body was that his name would be sent with Judge A. Leon Higgenbotham, who is a distinguished black judge. I heard that he would be the nominee for Attorney General and that Judge Higgenbotham would be the nominee for Deputy Attorney General.

I am not saying that that was deliberately stimulated somewhere in the Carter camp, but it got wide, wide coverage. Judge Higgenbotham happens to be a friend of mine. I have great respect for him.

I thought I ought to ask him whether it was true. He said, "No." No one had asked him about the possibility of being a part of the Justice Department team.

Then, when the temperature rose and the nomination of Mr. Bell was made public, the rumors resurfaced about the possibility of Judge Higgenbotham going in. I learned again that no overtures had been made to him.

Then I found out independent of him that there was a meeting between Mr. Bell and Judge Higgenbotham at a recent date prior to these hearings. I further learned that there was under consideration the putting of Judge McCree, of your State, in the position of Solicitor General.

That is why I say that, as far as I understand the laws of this country, the only way we can get an authentic bit of information about who will be in a high post in the Department of Justice is from the President-elect. I assume that the President will consult with the Attorney General-designate about who should go over there and who will be compatible with him, but under the law the President must make that decision.

That decision has not yet been made; at least it has not yet been announced.

Senator RIEGLE. I thank you for your comments. As I say, I will give them careful thought and evaluation as to what you had to say today as well as anything else you want to put forward at a later point.

Senator KENNEDY [acting chairman]. Senator Heinz?

Senator HEINZ. It is good to see you, sir.

I would like, if I may, Mr. Mitchell, to ask you a central question. In your testimony you said that one of the central questions was whether Griffin Bell is the same man or a new Griffin Bell.

If he is the same man, judged on what you have heard him say today, I would like to know how you feel about him.

Mr. MITCHELL. I feel that Judge Bell is a gentleman of dignified manner. As has been pointed out, he has a great storehouse of patience. He is willing to listen to questions that have been asked.

But I believe he is a man who is blessed with an abundance of ability to evade. I believe that he has not been candid with this committee. It certainly seemed to me that he was not candid with you when you raised the question about the *Biscayne Bay* case.

Throughout his testimony there were points at which you were left a blank where you felt that somehow or other it was consciously being left that way. It does seem to me that the only way that kind of doubt can be cleared up is to have the parties who are involved in this, and there are a lot of them, come up and give their versions of what happened: and hopefully to find, as I think I said when possibly you were out of the room, at least a scrap of paper where you could find something about his record.

There was this business of the illegal lottery, the thing that used to trouble the police departments was something known as flash paper. This flash paper was something on which all kinds of records could be kept. But when the police knocked on the door, a match would dispose of the whole thing in a flash.

Apparently the records down there were on flash paper. Nobody knows where they are. Nobody can produce them.

I do think that we ought to have something, just as we found this notation about the Governor in the archives. I heard Judge Bell say that he and his friends had checked the archives and a lot of stuff and had not found anything.

Well, how was it that we were able to find this memorandum which, according to the archives, is in the Governor's file and apparently describes a meeting that he attended? Why could he not, knowing the State better than we, find and bring to this committee that kind of thing and explain why it is there?

Senator HEINZ. So, of your own mind, you are quite firmly convinced that whoever Griffin Bell was in the late 1950's, he is not substantially different today?

Mr. MITCHELL. That is my opinion; yes.

Senator HEINZ. Whereas, if you were convinced that he were substantially different today from whatever it was that he was back in 1957 and 1958, would you have a different opinion of his fitness to serve?

Mr. MITCHELL. I can only say about the gentleman who was elected to the President of the United States, I do not know much about his background in the State of Georgia, but I have gone on record saying

that I believe that his election opens new vistas in the future of this country and that at last we may be able to put aside the geographical considerations in electing or appointing people to public office.

So whatever Mr. Carter was, I am accepting that he is now what he says he is. If we could have convincing evidence that the same thing applies to Judge Bell, then that would be something to consider.

But so far I do not see that evidence before this committee.

Senator HEINZ. Let me ask you a question involving the case of *Palmer v. Thompson*, which Judge Bell and I discussed in the course of the hearing this morning.

That is the so-called Jackson, Miss., swimming pool case. I think you referred to it at one point in your remarks here this afternoon.

Mr. MITCHELL. I did not, but counsel here could comment on it. I do not know whether I introduced him while you were here. This is Mr. Nathaniel Jones, who is general counsel of the NAACP.

He advises me that he is familiar with that case. I would be glad to try to answer it, but he would be better.

Senator HEINZ. I regret that I was not present when you began your testimony, Mr. Mitchell, and when you introduced Mr. Jones. It is a pleasure to have you here.

Let me read, if I may, a quotation into the record from Judge Bell's concurring opinion. He stated as follows:

Whether to operate swimming pools, racial discrimination aside, is a matter for the city of Jackson. We can easily surmise, indeed it may not be disputed, that the closings here were racially motivated. Mere racial motivation, however, is not proof of a racially discriminatory purpose in the closing. The presence of absence of such a purpose was and is the real issue.

That statement raises a number of questions.

One question that I did address to Judge Bell was what or how he would define discrimination. It is a question that seems to be pertinent when he would be the person who must decide when to undertake enforcement action involving enforcement of civil rights statutes.

A second question in addition to just a definition of discrimination, a working definition for the Attorney General to have in order to proceed, is this: What, in your judgment as a lawyer, or in the opinion of your distinguished associate, is the difference between the phrase "racial motivation" in the context of this quotation and "racially discriminatory purpose"?

As a lawyer, are those discreet different terms, or is that something else?

Mr. MITCHELL. It seems to me as a lawyer, it depends on whether you are going to construe the Constitution on the broad basis that is indicated by the plain language: or whether you are going to try to compress that language into a small dimension where you can put it into an eyedropper and give it to people on that basis.

It seems to me that what this is doing is the same thing that the Supreme Court did yesterday in that housing case. It is placing on the victims the burden of proving that those who denied them their rights, after the denial is clear for all to see, it places on the victims the burden of proving that the people acted with the wrong intent.

In the law there is such a thing as taking judicial notice. It does seem to me that in a set of circumstances such as that, where for years

the swimming pool is operated, and then when the blacks try to make use of it, it is disposed of, then it seems to me the court could surely take judicial notice of the fact that this has the effect of denying to the black citizens the access to a facility that was formerly available to whites.

This is the thing that troubles me about not only Judge Bell but about the Supreme Court as presently constituted. There seems to be a drift in the direction of making the victims of discrimination produce mountains of evidence as to what was in the minds of those who discriminated against them. The only way I know how you can get that is with a crystal ball or maybe a fortune teller, which as far as I know the law does not accept as evidence.

Senator HEINZ. I am a nonlawyer. Could you help me with a question that may be very clear to you but is not fully clear to me. That is whether you can actually make a distinction, as is made in this opinion, that mere racial motivation on one hand is somehow different and is not proof of a racially discriminatory purpose.

Not being a lawyer. I do not appreciate the fine points. To me, I fail to see a tremendous distinction between those two terms; but perhaps there is.

Mr. MITCHELL. Being a lawyer, I do not see the distinction either. I think that is one of the reasons why it is a good thing that non-lawyers are on this committee.

If you go dealing with words of art and complicated terms that a layman cannot understand, then it seems to me that you pervert the clear meaning of the law.

There was a big discussion about "recommendation" and "endorsement" here the other day with people going to the dictionary to find out what it meant. It seems to me that that is surplus.

The question is, does the Constitution say that people are entitled to equal treatment under the law? In the circumstances of this case, were they denied that right? Did they present a sufficient amount of evidence to shift the burden of proof to those who are the defendants in the form of rebuttal?

I think that case did that. It seems to me the use of all these exotic terms merely results in clouding the issue and making it appear that there is some legal substance and legal sanction of what is clearly an unconstitutional act.

Senator HEINZ. Let me address to you my third and final question and line of inquiry.

You are here opposing Judge Bell's confirmation by the Senate.

Mr. MITCHELL. That is correct.

Senator HEINZ. I think any member of this committee probably would oppose a nomination of an individual if we were convinced that that designee would be less than candid with us and if he was intentionally fuzzing things up.

We have been through a difficult, long, tragic, and overpowering period with too many Watergate figures from the President on down to want to have anything more to do with that kind of obfuscation which we lived with for a number of years most unhappily. Be we of different races, different parties, different sexes, I think it was all a tragic and historical experience, one we must not relive.

My question, however, is this. Absent our decision that this in fact is what is happening, what tests should we apply in this committee in judging Bell's nomination?

If we do not conclude that he has been dishonest, if we do not conclude that he has tried to paint a different face on this history of his career and public service as an individual serving the Governor of the State of Georgia, to what extent should we apply a more stringent test here than might have been the past practice of this committee?

Mr. MITCHELL. I do not think there is any need to have a stringent test. I think it is really a question of trying to fill in the blank spaces.

For example, historically, when the State of Georgia enacted all these restrictive laws on school desegregation, the city of Atlanta was moving in a different direction. This put the Governor of Georgia on a collision course with the mayor of the city of Atlanta.

Judge Bell was on the side of the Governor from the record. It seems to me we ought to at least ask, after they had all those massive resistance laws on the books, taking into consideration that the people of Atlanta wanted to obey the court's decision, did he ever move or work to have these laws repealed or changed in such a way that Atlanta could exercise its local options and have its schools desegregated if we wanted to?

The record seems to show to the contrary. The record shows that these repressive laws were enacted. Then when it was discovered that this showed a nexus, as he said to you when you asked the question, between the State's action to deny people the right by the passage of laws such as this; then they went into the sophisticated maneuver of repealing those laws and enacting other kinds. Apparently they assumed these were less suspect from a constitutional standpoint.

I think we are entitled to know, was he in his capacity as he says behind the scenes, was he saying to anybody: This is enough; let's not try to evade the court's decision? The laws which on their face were unconstitutional; let's not try a sophisticated attempt. Above all, if we really believe in the right of people to exercise local option, let's not stand in the way of the city of Atlanta.

That does not appear in the record.

It would seem to me we could clear that up by having him give his version and having the city officials at that time give their version. I do not know if the man who was mayor at that time is still living. It seems to me he could clear up a lot of these things.

This is what I hope the committee would do.

Senator HEINZ. I am about out of time. Perhaps we can get into some of those questions later.

I want to say in closing, Mr. Mitchell, that you said something in your testimony that I would like to comment upon.

You touched upon and raised a small specter of partisanship. I think, by suggesting that the Democrats on this committee would not treat Judge Bell's nomination in the fashion they might if he were sent to us by a Republican administration.

I would like to say that I certainly hope that is not the case. From the way—in all fairness to my Democratic colleagues, they have been inquiring, as the way Senator Kennedy has made his inquiries, the way Senator Riegle and Bayh have made their inquiries. Frankly, I do not

think you need fear on either side of the aisle that people will not be totally objective.

I really do not think that will be the case because in the brief opportunity I have had to work in the last few days with the members of this committee on both sides of the aisle, I think they have been very fair and inquiring, all of them.

Mr. MITCHELL. You know, Senator Heinz, my first encounter with you was when you were a young and idealistic man in the office of your predecessor.

Senator BAYH. Mr. Mitchell, he looks young and idealistic now. [Laughter.]

Mr. MITCHELL. He is still idealistic, as evidenced by his last statement.

Senator HEINZ. I remember that meeting very well. I remember every word that you said. I do not want you to put them on the record.

Mr. MITCHELL. I won't. They are complimentary.

In your service, though, you have kept that idealism. I would like to believe that we do not live in a world where political situations enter the picture.

I was 65 on my last birthday. There is very little that happens in this city that I have not seen before. I did not make that statement lightly. I did not make it in a spirit of reproach. I was stating it as a fact of life.

I hope very much that you and Senator Riegle and other nonlawyers would stay on this committee because you are needed. The law should not be solely entrusted to lawyers and particularly in the Congress.

Senator HEINZ. The odds are against entrusting the law to somebody other than lawyers in Congress. You realize that, regardless of what committee it is.

Mr. MITCHELL. You have the final vote when you get to the floor.

Senator HEINZ. This is something that I appreciate your feelings about, but as a matter for a large electorate of the American people to ultimately decide.

Mr. MITCHELL. I know, but I do not think you need to go to the people to make this change because there is nothing in the history of this committee which would preclude a lawyer from serving on it.

I remember a Senator from Kentucky who had a title as a judge which was a function of administering relief, Senator Clements, who was Governor of Kentucky.

He told me when he first came to Washington they asked him what kind of a committee he wanted to be on. They thought, because he had the title of judge administering a relief program, that he was a judge of law and put him on this committee.

So he went to those who had put him on and said: Look, this is a nice compliment, but I am not a lawyer, not a judge. They said that you don't have to be. He said: But I want to be on Agriculture. So they put him on Agriculture.

I do not know of anything in the rules of the Senate or the law which would say that the members of this committee had to be lawyers. I would hope you would press that point. I would hope that you and Senator Riegle stay here because of the leavening effect that commonsense has when you are dealing with the law.

Senator HEINZ. Mr. Mitchell, all I can say by virtue of the fact that I am sitting with this committee and am a member of it for now, QED, as a lawyer would say, I do not think there is any rule against it.

Thank you, Mr. Chairman.

Senator MATHIAS. Mr. Chairman, I have sat here and watched three of my colleagues get the last word. I know it is impossible, but I just want to say one thing briefly.

It will sound like a rebuttal to Senator Bayh. It is not. It is meant as reassurance for Mr. Mitchell. In a sense, it is an explanation to Judge Bell.

Eight years ago when this committee went through this exercise, there were high hopes for a new administration. Today Senator Bayh does not have higher hopes than I do for the Carter administration. I hope Governor Carter is a great President, his administration will be a great administration.

Eight years ago this committee was so sure that everything was going to be all right that when the Attorney General designate was examined, the hearing record, if you look at it today, was about that thick [indicating]. It was perfunctory.

If we have learned anything from this period in history, it is that the Congress has to do a thorough job. The Congress has not always done its job, but I think I can say to you, Mr. Mitchell, that we will try to do it this time. I think I can say to you, Judge Bell, that the kind of thorough examination that we have been giving you is a reflection of some of those lessons of history and that however much we may hope for any administration as we enter upon it, our job is to find all that we can find by way of facts and information and to find all that we can find by way of facts and information and opinions that will be used and to do it in an unhurried, deliberate way. That is what we are about.

Thank you very much.

Mr. MITCHELL. Thank you.

Senator KENNEDY. We thank you very much, Mr. Mitchell.

We will recess until 9 o'clock tomorrow morning.

[Whereupon, at 6:55 p.m., the committee recessed.]

NOMINATION OF GRIFFIN B. BELL

THURSDAY, JANUARY 13, 1977

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 9:20 a.m., in room 2228, Dirksen Senate Office Building, Senator James O. Eastland, chairman, presiding.

Present: Senators Eastland, McClellan, Kennedy, Bayh, Burdick, Abourezk, Riegle, Sasser, Thurmond, Mathias, Chafee, and Heinz.

Also present: Francis C. Rosenberger, chief counsel, and J. C. Argetsinger, David Dixon, and Britt Singletary, of the committee staff.

Senator KENNEDY [acting chairman]. The committee will come to order.

Congressman Mitchell?

Senator MATHIAS. Mr. Chairman?

Senator KENNEDY. Senator Mathias.

Senator MATHIAS. Mr. Chairman, I have the pleasure of introducing my distinguished colleague from Maryland, Representative Parren Mitchell. He is a Member of the House and has been for a number of years. He has represented his district with great distinction. He now has the honor of being the chairman of the Black Caucus in the House of Representatives.

I think he comes here in the character of someone who has been vitally interested in the community and State of Maryland and the country for all his life.

Senator KENNEDY. Congressman, we welcome you here this morning. We apologize because we know you were here for some time during the last couple of days.

We look forward to your testimony.

TESTIMONY OF PARREN J. MITCHELL, A REPRESENTATIVE FROM MARYLAND

Mr. MITCHELL. Thank you very much, Mr. Chairman and members of the committee. I am very grateful for this opportunity to appear before you.

I thank my Senator from Maryland, Senator Mathias, for his kind remarks. He has served his State with great distinction. I am grateful not only for the representation that he gives, but for a friendship that goes back many, many years. I publicly am grateful for that kind of association.

I am Parren Mitchell, and I do represent the seventh district of Maryland. Today I am here representing the Congressional Black Caucus. I have the honor to serve as chairman of that caucus.

Hopefully, Congressman Louis Stokes of Ohio will be joining us. All of you know Congressman Stokes, a very distinguished Member of the House for a number of years. There was a change in time, therefore it might present some difficulty for him.

I think all of the members of the committee have copies of my testimony. I know you have lots and lots of people that you want to hear from today. Therefore, with the permission of the Chair, I would like to submit the testimony for the record and merely read parts of that testimony or talk to parts of that testimony.

Senator KENNEDY [acting chairman]. Fine; whatever way you would like to proceed, we will make your full statement a part of the record.

[The prepared statement referred to follows.]

TESTIMONY OF HON. PARREN J. MITCHELL, CHAIRMAN, CONGRESSIONAL BLACK CAUCUS

Mr. Chairman and members of the committee, I am Parren J. Mitchell, a Member of the House of Representatives and Chairman of the Congressional Black Caucus. I am here today to testify on behalf of the members of the Caucus on the nomination of Griffin B. Bell to serve as United States Attorney General.

I would like to say at the outset that the members of the Caucus have reacted with some disappointment to some of the cabinet nominees. We believed that the opportunity was at hand to bring into high office individuals whose record indicated the commitment and aggressiveness to bring about fundamental social change in this country. Instead, we find some cabinet nominees who appear to have an economic orientation more responsive to the more affluent than to those of lesser means. Many of the nominees are members of corporate boards of directors, four in fact are on the board of IBM. Few of the nominees to our knowledge have had extensive involvement with local anti-poverty and civil rights efforts.

The business community has been reassured, but what of those who elected the new President? As representatives of many of the nation's poorest citizens, we are acutely aware that despite progress, Black income remains at 60 percent that of whites, that Blacks remain vastly underrepresented in the most influential positions in government and the private sector, that there have been continuing attacks on efforts to bring about equal opportunity in all segments of our society.

We do not doubt that the nominees are people of good will. We do hope that the cabinet members who take office will recognize this opportunity for fundamental change and move us forward from the despair many of us have felt during the past eight years. Yet against the background of those nominated to serve in the cabinet, we feel it essential that mechanisms stressing full citizen participation be instituted to ensure accountability and that appointments to important sub-cabinet posts bring in those with both high qualifications and the experience of working with the least advantaged in the society.

Masses of Black people supported the candidacy of our President-elect in the belief that his appointments and policies would be in consonance with the needs and desire of Black people. Many of us in the Caucus traveled the country to ensure a strong vote for his candidacy. We believe that the performance must meet the promises. And we hold to our hope that this Administration will be responsive to the needs.

Nonetheless, we felt it our obligation to appear before this committee today to oppose the nomination of Griffin Bell to serve as Attorney General. Perhaps the President-elect knows Mr. Bell well enough to feel assured that he will meet the high standards necessary for such an important office. We have nothing but the record to go on, and on that record as we have seen it, we must oppose confirmation of Mr. Bell.

There are four chief areas of concern with respect to Mr. Bell's record: (1) His service from 1959-1961 as Chief of Staff and top legal adviser to former

Georgia Governor Ernest Vandiver, a period when Governor Vandiver was carrying out a policy of massive resistance to racial integration in Georgia.

THE PERIOD OF MASSIVE RESISTANCE, 1959-1961

Let me speak first to the period of 1959 to 1961 when Griffin was Chief of Staff to Governor Ernest Vandiver and served as his chief legal counsel. The campaign and governorship of Ernest Vandiver were openly and avowedly segregationist. The record of statements and action by Vandiver in an effort to stop racial integration in the State of Georgia is overwhelming.

For instance, during the campaign, candidate Vandiver is quoted as saying "There is not enough money in the federal treasury to force us to mix the races in the classrooms." (Southern School News, June 1958, p. 3.) on September 8, 1958 he said "I make this solemn pledge to the mothers and fathers and to the people—when Ernest Vandiver is your governor, neither my three children, nor any of yours, will ever attend a racially mixed school or college in this state." (Atlanta Constitution, September 9, 1958, 13:4.) When Griffin Bell took the position of Chief of Staff to Governor Vandiver, he did with a full and acute understanding of the policies he would be required to advocate.

Griffin Bell's role in the campaign and in many of the actions taken by Governor Vandiver remain to be spelled out in detail. Yet there is a strong presumption that the chief staff aide and chief legal counsel to the Governor was deeply involved in the actions and policies which evolved. We believe it is essential to question Mr. Bell in detail as to his role in these matters and further to bring before the committee others who worked closely with Mr. Bell during this period of time.

One of the clearest efforts in which Mr. Bell was involved was as one of four lawyers sent to Virginia by Governor-elect Vandiver during the week of November 11, 1958 to gather information on massive resistance tactics being used there. In December 1958 these four lawyers visited other southern states for the same purpose. (See Atlanta Constitution, November 18, 1958, 1:8; Southern School News, December 1958, p. 15 and January 1959, p. 5).

Immediately following his inauguration, Governor Vandiver proposed a series of school segregation laws which he described as based on a study by the "best legal minds in the state". (Southern School News, February 1959, p. 10).

During 1959 there was continuing debate as to whether schools should close rather than integrate. Governor Vandiver was an outspoken advocate for closing the schools. In June 1959, the federal District Court ruled that the Atlanta schools would have to desegregate; Governor Vandiver said he would close them down to prevent it. (Southern School News, July 1959, pp. 1-2). In July 1959, a five-man group of lawyers, including Griffin Bell, met at the governor's mansion "to plan segregation strategy". (Southern School News, August 1959, p. 4).

I will not here detail the extensive record of efforts by Governor Vandiver and his Administration to maintain segregation in Georgia. I am certain that none of these facts will be presented to this committee. The question I would like to raise is what role did Griffin Bell play in these matters and what is the meaning of his involvement for his nomination as United States Attorney General?

I believe that the answers as to Mr. Bell's role in the Vandiver Administration will have to come from the nominee himself and from others who served and worked with him at that time. On the face of it, Mr. Bell, with full knowledge of the racist, segregationist campaign run by Mr. Vandiver became the Governor's chief of staff. On the face of it, as the closest adviser to the Governor and with specific assignment of determining how to maintain segregated schools in Georgia, Mr. Bell would be assumed to be a willing participant, if not as some have charged, the architect of massive resistance. We need a clear and thorough answer to these disturbing questions.

What is the meaning of that involvement? Assuming a role of support for and advocacy of segregationist policies and practices as the record on its face would indicate, does this disqualify Mr. Bell from holding the post of Attorney General?

The members of the Congressional Black Caucus do believe that deep involvement in implementing and supporting a policy of segregation should disqualify a man from holding the position of United States Attorney General unless there has been a clear and convincing reversal of that policy and viewpoint. We do not believe that in this case there has been that reversal.

The Attorney General of the United States must be above reproach. Unless refuted, the record firmly indicates that Griffin Bell was deeply involved in activi-

ties offensive not only to millions of Black Americans, but to all who believe in equality and justice for all. His important involvement in the Vander administration seriously furnishes Mr. Bell's credentials to hold the nation's highest legal office. Why, when the nation cries out for simple justice, must our top law enforcement official take office under a cloud?

(2) Mr. Bell's strong support in 1970 of the nomination of G. Harrold Carswell to serve as a United States Supreme Court Justice, and Mr. Bell's recent misstatement of the record of that support;

SUPPORT FOR G. HARROLD CARSWELL'S NOMINATION TO THE SUPREME COURT

Mr. Bell's actions and statements with respect to the nomination of G. Harrold Carswell as a Supreme Court Justice are strong indication that he has not, since 1961, come to a position of forceful advocacy of and support for minority rights. On January 26, 1970, Griffin Bell wrote to the Senate Judiciary Committee expressing unqualified support for Judge Carswell. By the time of the Bell letter, it was abundantly clear to the public that Carswell's record on race relations was abominable.

Worse still, when this story broke soon after Mr. Bell was named as the nominee for Attorney General, he denied that he knew of Carswell's pro-segregation speech as a candidate for the Florida state legislature, a position he has since revised. Yet that speech had been reported in the press several days prior to Bell's January 26 letter, as Mr. Bell has subsequently acknowledged.

This represents strong endorsement as recently as 1970 of a man whose record on race relations was clearly unacceptable. Such conduct would be troubling in a person nominated to even a minor federal office. For a man nominated to serve as the nation's highest legal officer, it is alarming. (3) A record during 15 years as a sitting judge on the Federal Court of Appeals which can best be characterized as barely meeting the requirements of the Constitution with respect to the 14th Amendment, and a record replete with opinions which display attitudes and policies which simply should not be those of the United States Attorney General.

TENURE AS FEDERAL APPELLATE COURT JUDGE

With a nominee who served fifteen years on the United States Court of Appeals covering most of the South in a period of major progress toward equal opportunity, one must look at the record of the nominee's decisions and votes on the major cases before that court. Judge Bell's record on the court shows continuing efforts to limit remedies in civil rights actions, accompanied by several positive opinions. Most disturbing, a number of his opinions in education" and "compulsory integration" and denounced the HEW Guidelines as an swift change to fulfill rights still limited despite legislation and Supreme Court decisions reaffirming those rights. The next four years will be a critical time for full attainment of those rights.

Judge Bell's opinions in school desegregation cases are particularly troubling. In *United States v. Jefferson County Board of Education*, 380 F. 2d 385 (5th Cir. 1967) (en banc), the court held that school districts have an affirmative duty to bring about integrated, unitary school systems, and the court upheld HEW guidelines setting numerical requirements for school desegregation. Judge Bell dissented, joining in an opinion by Judge Gewin referring to "enforced integration," and writing his own dissent in which he referred to "compelled integration" and "compulsory integration" and denounced the HEW Guidelines as an interference with personal liberty.

In *United States v. Austin Independent School District*, 467 F. 2d 848 (5th Circuit 1972) (en banc), the Fifth Circuit reversed a District Court decision rejecting the HEW proposals for school desegregation, and ordered effective relief to convert to a unitary school system. The court particularly denounced the closing of all-Black schools which put the burden of desegregation on Black students, and approved busing to achieve desegregation. Judge Bell (joined by seven other judges) wrote a special concurring opinion stating that the District Court did not have an obligation to eliminate all one-race schools and that busing should be minimized.

Judge Bell's opinion in this case so outraged the liberal, pro-civil rights wing of the court that those judges took the unusual step of writing a separate opinion to denounce Judge Bell's special concurring opinion, saying that it was

written "as if there were no record before the Court" and that it "consists of abstract admonitions most of them old-hat to this Court, so general as to be unrelated to the facts and the issues in this case." The liberal judges called Judge Bell's view that "there was no obligation to eliminate system-wide segregation 'destructive'" and his language "blatant euphemisms to avoid desegregating the system, preserving the whiteness of certain schools." Referring to Judge Bell's opinion they wrote:

"It is said that it marks a turning point for this Court. It is the first backward step for a Court that has labored mightily to follow faithfully the mandates of the Supreme Court and of Congress in the fields of civil rights."

In employment discrimination cases, Judge Bell took some positions which can best be described as disastrous. He is clearly opposed to affirmative action to remedy the effects of past discrimination and he has failed to follow remedies of other courts against tests which are unrelated to job performance and which have the effect of discriminating against minorities.

For example, in *Allen v. City of Mobile*, 331 F. Supp. 1134 (S.D. Ala. 1971, aff'd, 466 F. 2d 122 (5th Cir. 1972)), the District Court upheld a sergeant's examination used by the Mobile Police Department which 60.6 percent of the white applicants passed and on the basis of which only one Black had been promoted to sergeant, without requiring (because a validation study would cost \$50,000) any local study to show that high test scores actually had any correlation with successful job performance. The Fifth Circuit, in a per curiam opinion in which Judge Bell joined, simply affirmed the decision of the District Court. A strong dissent by Judge Goldberg said that "the Constitution cannot stand immobile while a generation of working police officers suffer from the continuing operations and effects of racially discriminatory procedures, however subtle."

Judge Bell also joined in a particularly disturbing opinion which limited jurisdiction under 42 U.S.C. 1983, a key civil rights statute. In *Muniz v. City of San Antonio*, 528 F. 2d 499 (5th Circuit 1976) (en banc), the court held that former police officers and fire fighters could not, under 42 U.S.C. 1983, sue the trustees of a pension fund to challenge the constitutionality of a state statute barring them from receiving refunds of amounts contributed because the suit was in reality one against the fund, and since the fund could not be sued under Section 1983 (which is limited to suits against "persons"), no jurisdiction existed. The decision runs counter to a long line of cases which hold that the constitutionality of a state statute can be challenged by suing the officers charged with administering it.

Several judges of the Fifth Circuit dissented, and a strong dissenting opinion by Judge Tuttle warned that "the court seems to me to have whittled down the clear statutory grant of civil rights litigation under color of state law to little more than an empty promise".

(4) Membership in private clubs which prohibit membership by Blacks and by other minorities, failure to oppose those policies and recent statements indicating a total insensitivity to the meaning of that association.

MEMBERSHIP IN PRIVATE CLUBS WITH DISCRIMINATORY PRACTICES

Finally, there is the matter of Mr. Bell's membership in private clubs in Georgia which discriminate against Blacks, Jews, and other minorities in their membership policies. Unfortunately, we seem to have become so inured to the practice by leading citizens of joining clubs which practice what can only be described as racist policies that I doubt anyone would be rejected for high office on that basis alone. Several other cabinet nominees are members of private clubs excluding Blacks and Jews from membership. Yet that membership without protest is the more shocking for a high federal judge charged with enforcing the civil rights laws. In fact when a case challenging such discriminatory practices by a private club came before Judge Bell, he failed to excuse himself despite the clear conflict of interest. (*Golden v. Biscayne Bay Yacht Club*, 530 F. 2d, (1975)).

Further Judge Bell's response to revelations of this membership since he was named as Attorney General-designate displays a continuing insensitivity to the fundamental meaning of racial justice. In response to calls for his resignation from the clubs, Mr. Bell at first said he would be inactive only while in Washington, but that he "won't be in Washington forever." (New York Times, December 22, 1976). Mr. Bell does not appear ready to accept the principle that a person should not join clubs which discriminate, whether or not they hold high

office. One is struck by the parallel to putting actions which support discriminatory institutions into a "blind trust" while in office. While Mr. Bell appears to have thought better of this position, his initial reaction is again disturbing as to his underlying philosophy.

Mr. Chairman, it is a difficult decision to oppose the nomination to high office made by the President-elect of our party for whom we made strenuous efforts to ensure his election. In addition, we recognize that there are many appointments made by the Justice Department which are crucial for Blacks which many persons feel we may jeopardize by our opposition to Judge Griffin Bell, including U.S. Attorneys and federal judges, particularly in the South. Yet the facts are so compelling that we feel we must take the principled stand at this time because of the implications not only for Blacks, but for the entire nation. During his campaign, Governor Carter said that when his cabinet selections were completed, we would be proud of the choices he made. The record of Mr. Bell is not one which makes us proud.

The Justice Department's actions daily have profound impact on all segments of American society. It is the protector of our rights and the enforcer of our laws. Its policies and decisions affect matters from civil rights to antitrust policy, from the FBI to criminal prosecution, from the millions of dollars distributed by the Law Enforcement Assistance Administration to drug enforcement. And it plays a central role in the appointment of judges at all levels of the federal judiciary. Too much is at stake for us to remain silent. Too many serious questions have been raised for this nominee to be confirmed.

This nomination is particularly distressing in the wake of the Watergate experience. Who can forget the central role of the Attorney General in that national tragedy? Who can forget the broad and deep feeling that the nation's trust in itself had to be restored through making the office of Attorney General and its occupant above reproach? It is absolutely essential that the Attorney General be a person of unchallengeable integrity, commitment and credentials. Unfortunately, Mr. Bell is not that person.

On behalf of the Congressional Black Caucus, I urge that this committee reject the nomination of Griffin Bell to serve as United States Attorney General.

Mr. MITCHELL, Mr. Chairman and members of the committee, this is a very difficult assignment for me this morning. As you know, black Americans turned out in unprecedented numbers to help elect the President-elect, Jimmy Carter. Of course, we are not pleased with all of his cabinet appointments.

We are concerned about statements that appear in the press saying, well, the corporate community is satisfied. We raise questions: What about the poor and the blacks and the other minorities? When are we going to be satisfied? When are we going to be in contact with the incoming administration in the same fashion as the corporate interests?

The business community has been reassured. We simply raise the question: When are we going to be reassured?

There is no question but that most of the members of the Cabinet nominated by Mr. Carter are good people of good will. Obviously, because of our turnout in support for him, we want to be supportive of him and those that he nominates and recommends for various positions.

However, in the instance of the Attorney General, the designation of Mr. Bell to be Attorney General, we have no choice at all but to come here to oppose that recommendation.

I think we owe it not only to the Congress but the hundreds of thousands of black Americans who worked in the campaign for Mr. Carter, who have great expectations and hopes, assuming that now we are going, at long last, to have a friend in the White House; and we are going to have friends in the Cabinet who are not going to be sensitive to our concerns and supportive of our efforts. They will be people with whom at least we can communicate.

I think we are able to say that about most of the recommendations for the Cabinet. In the instance of Mr. Bell, those of us in the caucus who voted to oppose the nomination felt deep in our guts, we had a visceral feeling, that we would not have a friend in the Attorney General's office.

Our concerns focus in on several areas. I know we have discussed these at length, and you have the testimony before you. We have discussed the period of his chief of staff position with Governor Vandiver. Rather than rework all of that testimony again that you have probel on, I think I will merely allude to each one of our areas of concern and speak, digressing somewhat from the prepared testimony to those areas of concern.

I think it is imperative that this committee know in detail what Mr. Bell did and when he did it with reference to the segregationist policies advocated by Governor Vandiver. We have got to know that. It is almost inescapably clear to me—and I think it should be inescapably clear to the members of this committee—that Mr. Bell was the architect. He was the key to the development of Georgia's massive resistance. Everything spells that out so very clearly.

There are some things that disturb me a great deal. In his testimony Mr. Bell has indicated that there was a period of turmoil in Georgia and that in that period of turmoil he acted to operate as a mediator and conciliator, and that was about the best thing he could do in that period of turmoil.

In my opinion, one of the great accomplishments in America over the last twenty years has been the emergence of a new South. Indeed it did emerge. It is a pleasure for me to be able to go to Dallas and to Houston and to New Orleans and Atlanta and Birmingham and have access to places of public accommodation and to be treated like a man.

But I submit to you that new South emerged not because there were men who played behind the scenes, not because there were men who would not face up to the mob; it emerged because we did have such men.

I would suggest to you that Judge Bell was not such a man. You go all the way in the history of the South to Frank Graham in the University of North Carolina. He constantly was probing for the advancement of blacks and other minorities in North Carolina. He was setting the stage.

We have a number of distinguished judges who placed themselves way out on a limb in terms of principle. They did not work behind the scenes. What they did was to face up to a mob and say, we are going to do the thing that is just, that is right, that is fair, and that is proper.

This is not the impression that we have with regard to Mr. Bell. Instead, we believe that he knuckled under to the mob attitudes. In knuckling under, he became the key, the mastermind in Georgia's massive resistance plan.

I would suggest to you that there are several other things that he has said with reference to that period that disturb me.

One was that he was trying to make Georgia a little less segregated. Well, that is just astonishing to me. Is it possible for us to say that a little bit of cancer is better than a big bit of cancer? In our dealings with the Soviet Union, do we say the Soviet Union has now cut down

a little bit on its political repression of people; therefore that is a vast improvement?

No; we do not. This country has always stood up for principle. The principle has been that there are such things that transcend governments and policies. One such thing is the inherent right of a human being. We have stood foursquare on that.

To talk in terms of a little less segregation being an acceptable kind of thesis on which to operate is totally incomprehensible to me. In the Senate, would you be content if someone said: OK, we are going to take away some of your power but leave you a part of it. Would you be content with that? Of course you would not.

To say that some segregation is acceptable, that Mr. Bell sought to reduce the amount of segregation because of the turmoil of the time, is just an incomprehensible kind of statement to me. To further indicate that this should be accepted as an act of good will by the members of this committee is just confounding to me.

There are several other areas of concern about that earlier period. The question of the nominee being a moderate is one area; and, indeed, he has proclaimed that he is a moderate. Well, he has also proclaimed that he has been a mediator.

I know you mediate in terms of labor-management disputes, and you mediate in terms of other things. But in my opinion you do not mediate, you do not conciliate on the law of the land in civil rights. You simply do not do that.

At what point in our history did we start talking about mediating in the area of civil rights? As a moderate, I think black people will have a number of questions to ask about that self-description as being a moderate. He said he is a moderate and not an activist or an extreme liberal on civil rights issues.

We have got to raise some questions. I would hope that the members of the committee would raise these questions. What does a "moderate" mean when faced with the decision whether or not to cut off Federal funds to a noncomplying public or private recipient? What does a "moderate" mean when deciding whether to press a controversial voting rights issue? What does a "moderate" mean when faced with community opposition to a court-ordered desegregation plan?

What does a "moderate" mean when faced with the decision whether to pursue a major antitrust action?

I know we have problems with definitions of words, but it seems to me to be critical to black Americans and men to good will in this country to find out what the role of a "moderate" will really mean in the Justice Department if Mr. Bell is confirmed. And I certainly hope that he is not.

Our other major area of concern has been the support for Mr. Carswell. Let me indicate that I share with Judge Bell the desire not to hurt a man who is already down. But there are still very troubling questions about that kind of support.

It seems to me the issue becomes a question of the judgment of the man. He supported Mr. Carswell and after knowing all the facts about him continued that support. Then, when questioned by the press, he indicated that he did not know the facts.

I submit that that is a very troubling kind of situation. I do not think that this committee ought to be satisfied until it knows with surety whether we are dealing with a designee who is consistent in value judgments, consistent in his judgments about people, whether or not friendship or cronyism or anything else is going to be the paramount thing in staffing up the Justice Department.

We have talked many times about our other area of concern. We have heard a great deal of discussion about it. That is the matter of the segregated private clubs. Someone raised the question, and we might as well deal with that right now: Parren Mitchell, how is it possible for you to challenge someone in terms of membership in a segregated club when you belong to the Congressional Black Caucus?

Well, of course it is possible. We have women's organizations. We have a black caucus. We had a southern caucus at one time.

There is a great deal of difference between an interest group in the legislative process and a segregated club in the social process.

What perhaps disturbs me the most is the statement that I believe Judge Bell made that, if he becomes Attorney General, then he will give up his membership in those private clubs until such time as he is no longer Attorney General.

I do not know how you interpret that, but it seems to me that, for the first time in America, we are hearing somebody talk about a pattern in which one's segregation is placed in a blind trust fund while he is serving in public office. That just does not make any kind of sense.

The court decisions have been rehearsed for you backwards and forwards. Of course, Judge Bell has made some good decisions. On the other hand, in testimony given yesterday, the extra-legal role that he apparently played in some of the cases which came before him do violence, I think, to the concept of how a judge should act.

You have heard specific decisions where there has been several questioning of the opinions and the decisions written by Judge Bell—questioning by his peers and colleagues. I am not an attorney, but I am certainly willing to take the statements made by some of his peers and colleagues with reference to bad decisions and bad opinions written by this judge.

I suppose I really ought to take a moment out just to sort of rehearse before the members of this committee what the last 8 years have meant to the vast majority of black people. We went through the Kennedy-Johnson era with a great deal of hope. We expected that, at long last, America was going to take that quantum step and become a Nation which would not operate in terms of race or prejudice or discrimination.

Then suddenly something happened. Under the leadership of Mr. Nixon and Mr. Ford, we gradually saw the erosion of many of the gains that we had made. We see a climate in which there is opposition to put blacks in professional schools. There is a great deal of talk about discrimination in reverse.

We see a climate developing—and I think that climate was carefully nurtured—in which there is the opinion that America has done too much for "them." And that means black people.

Despite all of the adversities of the last 8 years, across the country black people galvanized on November 2, assuming that maybe we ought

try one more time, just once more, to use the process to make ourselves fully equal citizens in this country. And we did.

I almost burst with pride in my district on November 2 when I saw long lines of black people standing, waiting to cast their vote for a friend in the White House. A number of us who stood in those lines and a number of us who campaigned for the President-elect were looking specifically at the Justice Department, at the Attorney General's Office.

We were looking forward to a time when, once again, the Justice Department would be considered our friend. Some of you will recall what it was like during the civil rights decade 1954 to 1964. At the local level in Mississippi or Alabama or Maryland or South Dakota, blacks and their white friends would say, OK, we're in trouble, but we know we can go to the Justice Department.

There was a great deal of hope. As we stood in line on November 2, that was a part of the dream that once again the Justice Department would become a friend and ally and advocate, a supporter for the poor, the black, and the minorities in this country. That was a dream.

Then, when we see this recommendation that Mr. Bell become the Attorney General, something happens to that dream. What happens to it was best described by the black poet, Langston Hughes:

What happens to a dream deferred?

Does it dry up
like a raisin in the sun?
Or fester like a sore——
And then run?
Does it stink like rotten meat?
Or crust and sugar over——
like a syrupy sweet?
Maybe it just sags
like a heavy load.
Or does it explode?

I am not suggesting any explosion. I am suggesting that that high level of expectation and hope that black people had for the idea of the Justice Department once again becoming our friend—that great expectation has been dashed severely because of the possible entrance of Mr. Bell into the Attorney General's Office.

I am a realist. I think I have learned since being here how to count votes. I read the editorials in the paper. I see how Judge Bell has been deferred to by so many people and accorded the ultimate in respect and social amenities.

I add all those things together. I know the picture is very clear. I can suspect what is going to happen. But I ask you to speculate on what is going to happen in the minds and the hearts of 25 million-plus black Americans when the first shock comes. When the first chance is offered to protect our interests and our concerns in this new administration and that chance is acted on badly either by this committee or by the Senate, what will be the effect?

I would like now to turn to the last page of my testimony and read from just the last two paragraphs beginning on page 7.

It is a difficult decision, Mr. Chairman and members of the committee, to oppose the nomination for high office made by the President-elect of our party, for whom we made strenuous efforts to insure his election. In addition, we recognize that there are many appointments made by the Justice Department which are crucial to blacks. Many persons feel that we may jeopardize these by our opposition to Judge Bell.

We were besieged by a number of people suggesting that, indeed, we will get no blacks as U.S. attorneys and we will get no blacks as Federal judges, particularly in the South, if the Black Caucus opposed Judge Bell.

Sure we want jobs, but there is a matter of principle involved always. It does not mean very much to place one black in a key position in the Justice Department and at the same time have the Justice Department operate to deny to millions of black people their rights and their privileges accorded to them under the Constitution.

The facts are so compelling in this case that we feel we must take this principled stand at this time because of the implications not only for blacks but for the entire Nation.

During his campaign, Governor Carter said that when his cabinet selections were completed, we would be proud of the choices he had made. The record of Mr. Bell is not one which makes us very proud.

The Justice Department actions daily have profound impact on all segments of the American society. It is the protector of our rights and the enforcer of our laws. Its policies and decisions affect matters from civil rights to antitrust policies, from FBI to criminal prosecution, from the millions of dollars distributed by the Law Enforcement Assistance Administration to drug enforcement.

It plays a central role in the appointment of judges of all levels of the Federal judiciary. I would respectfully suggest, Mr. Chairman and members of this committee, that simply too much is at stake for the Congressional Black Caucus to remain silent.

Too many serious questions have been raised about this nominee. He should not be confirmed.

The nomination is particularly distressing in the wake of the Watergate experience. Who can forget the central role of the Attorney General in that national tragedy? Who can forget the broad, the deep feeling that this Nation's trust in itself had to be restored through making the office of the Attorney General and its occupant above reproach?

It is absolutely essential that the Attorney General be a person of unchallengeable integrity, commitment, and credentials. Unfortunately, Mr. Chairman and members of the committee, Mr. Bell is not that person.

On behalf of the Congressional Black Caucus, I urge that this committee reject the nomination of Griffin Bell to serve as U.S. Attorney General.

Let me just say one brief statement. I was in uniform in New Orleans during the war. I rode the bus, and I did not sit behind the bar. Therefore I got arrested.

I was in the Deep South frequently during the civil rights period. I went through all of the insults and humiliations that any black

person could go through in the Deep South. Yet Mr. Chairman and members of this committee. I still believe in this system. I still believe that this is the system that is ultimately going to make every man, woman, and child an important entity and that governments will serve every man, woman, and child.

I still believe in the system. But I beg of you, do not strain that belief. Do not strain it. And you will strain it if you confirm Mr. Bell as the Attorney General.

Thank you very much for letting me speak to you this morning.

Senator KENNEDY. [acting chairman]. Congressman, you have made a very powerful statement here before the committee.

We know how closely you follow all the issues involving human rights and civil rights. Your record obviously in the Congress of the United States has been one of leadership in this area. Many people look to you as well as the Black Caucus to insure that these rights are going to be preserved.

So we take your message with a great deal of interest. We know that you have stated it with a good deal of conviction this morning. We welcome you to this committee and express our appreciation for your sharing your thoughts here with us this morning.

Senator Bayh?

Senator BAYH. Mr. Chairman, I certainly want to associate myself with the assessment that you have made of our witness and the leadership role he has played. It has been my good fortune to work with him in the transportation area. There, slowly but surely, we are in the process of creating a minority resource center; so as we rebuild the railroads of this country we are confident that those in the minority community who have the skills will also have a chance to have some of the jobs and utilize their talents in putting our railroads back in shape.

I want to say publicly that I appreciate the contribution Congressman Mitchell has made in this area.

Your use of the Langston Hughes poem struck home. Mr. Hughes happened to be black. My wife, who makes a lot of speeches about the rights of women and the need for equality there, finishes a lot of those speeches with that compelling reference to what happens to a dream deferred. I think that sums up in a very few words what happens.

Let me ask you a question. Congressman Mitchell. I know you have a number of other responsibilities.

You referred to insinuations or threats or outright statements that, if the Black Caucus opposed Judge Bell, you would be denied black judges, district attorneys, and other jobs.

That is a rather serious kind of threat for anybody to make. I know you do not refer to that in this committee lightly. Could you tell us who made that kind of a threat?

Mr. MITCHELL. Let me make it very clear it was not any member of the Carter administration nor, insofar as I know, persons associated closely with Judge Bell.

Indeed, I am not going to give names. Let me explain to you what happened. I would get a phone call at home from maybe a person who was a black mayor in some town. He would say: "My God, if the caucus opposes, Judge Bell is a part of the whole Carter administra-

tion and if I join in with you on this, then funds for my city will not be forthcoming from the Carter administration."

I got some calls from some black attorneys whom I know, both in the office in Washington and in my home in Baltimore. They said: "We think you are right in principle. We think the caucus is right to oppose this nomination, but remember we live in a political world. If we in any way associate ourselves with this, then the chances for us getting jobs in the Justice Department are in jeopardy."

It was that kind of thing. I want to make it very clear that it was not in any way related to the Carter administration or to Judge Bell or his close associates.

Senator BAYH. I appreciate your helping us to understand. It sounds as if this was an individual determination on the parts of individuals who were concerned.

Mr. MITCHELL. And some organizations.

Senator BAYH. Thank you very much.

I think the fact that the Black Caucus has taken this position is a very significant kind of thing. After all, you are more than Members of Congress. You speak for a large constituency. Your opinion carries a lot of weight.

As we go along here, if some of us reach the conclusion that Judge Bell should serve—and we in this committee are seeking the same goals, your desire that there not be a little segregation; whoever is Attorney General darn well better enforce those laws equitably across the board.

If we come to the conclusion that Judge Bell should serve, it is based on the fact that we believe he is a man who could reach these standards.

I can understand how you come to a different conclusion. But after we look back on this, if he does reach those standards, I would hope that the Black Caucus, in its typical fashion of candor, would express their satisfaction. I think a lot of people are looking to you. I mean men and women who have been out there on the point of this movement to see that black votes are relayed in meaningful political power.

I know that does not ease your concern for this nominee, but I certainly think that we cannot ignore the fact that you are opinion leaders out there. "A dream deferred"; we cannot let that happen.

Mr. MITCHELL. May I respond please?

Senator BAYH. Yes.

Mr. MITCHELL. I was almost pilloried in my local press in Baltimore when I raised serious questions about Mr. Nixon's performance in the White House. In one editorial I was ridiculed: "A Congressman has no business trying to dictate policy to a President."

Somehow or another, after years of experience, you get vibrations. Then you look at the record. Now we know that those of us who opposed Mr. Nixon's policies and practices were right.

I was similarly vilified in my State of Maryland when I spoke out against Mr. Agnew's insensitivity to the poor. There was the opinion that somehow or another I should not even criticize the Vice President, Mr. Agnew. Well, we were right. We have not always been right, and I am man enough when I am wrong to make an apology, publicly and loudly.

But in this instance, until there is indisputable evidence that Judge Bell is committed to equality across the board—not segmentally, not

piecemeal—until there is demonstrable, indisputable evidence to that effect, we will continue to oppose.

Senator KENNEDY. Senator Mathias?

Senator MATHIAS. Congressman, in your statement, which I was just reviewing a minute ago, most of the cases that you cite are civil rights cases. Of course, the Justice Department has a very broad responsibility. It touches almost every aspect of American life.

One example is the antitrust function, which every consumer has a vital interest in. There are pressing antitrust questions unresolved with which the Attorney General is going to have to grapple. There are questions relating to criminal law.

There are questions of how we structure Federal organizations dealing with cities that will impact on the decisions of the Justice Department.

I am wondering if your review of Judge Bell's record has contemplated any of these areas? They may not be more important than the civil rights questions, but they affect the lives of many of the people who are also affected by decisions in the civil rights area.

Mr. MITCHELL. No, Senator Mathias; unfortunately, we did not go into detail on the other aspects of the workings of the Justice Department.

It is not because we are not concerned about them. Obviously, to the extent that trusts continue to operate, we reduce the possibility of minorities going into business somewhere down the line.

We know that the whole scope of the operation of the Justice Department impacts on the lives of all Americans. But it was our feeling that perhaps others would address that issue—those other issues.

It was our further feeling that the civil rights record of the judge stood out in such sharp relief that that was the area in which we had to make our case. Certainly we are concerned about the other areas, but we did not research deeply into them.

Senator MATHIAS. I see.

One of the troubling questions I think this committee is going to have to wrestle with—and you might be useful on this—is that the evidence which we have had here in the last several days was of Judge Bell's activities when massive resistance was the policy in Georgia and that was 17 years ago. These were the events of 1958, 1959, and 1960.

Do you feel there has been a softening of Judge Bell's attitude since those days that would make a difference if he is Attorney General of the United States? He obviously is not the same Griffin Bell as the relatively young Atlanta lawyer of those days.

Mr. MITCHELL. If my recollection is correct, and I have to refer to my notes, it seems to me that Judge Bell participated in a court decision in 1976. I can check with a member of my staff: That was a year ago. Once again he was protective of segregationist policies. I would like to check it with my staff and pull that case if I can.

Nevertheless, I think you have got to understand, Senator Mathias, that even during the brief period that I have been in the Congress I have seen men stand up and raise their hand and take the oath that they were going to carry out their duties without regard to race, creed, or color. Then, once in place, all of their background and experience which was antiblacks or others somehow manifested itself.

Let me just say one other thing.

I see a member of the staff of the Black Caucus had just joined me. Mr. Chairman, may I introduce Barbara Williams, executive director of the Congressional Black Caucus.

In response to your question, I attempted to point out earlier in my testimony that it seems to me the true measure of statesmanship and commitment and real Americanism is when a man stands up for principle against almost unprecedented odds.

You have made tough decisions, Senator, with regard to political considerations; and you have stood up for what is right. I think every member on this committee has had to face some tough political decisions and make the choice between standing up for principle or knuckle under to whatever pressures are extant at that time.

I think you stand up for principle based upon a consistent lifetime pattern of standing up for principle. We do not find that consistent lifetime pattern with Judge Bell. Therefore I would seriously question whether he would deliver for us as Attorney General.

The case that I referred to in my testimony was the Miami Yacht Club case. That was just a year ago.

Senator MATHIAS. Thank you.

Senator KENNEDY. Senator Chafee?

Senator CHAFEE. Mr. Mitchell, I just want to touch on one point that has been raised. But, first of all, I appreciate the opportunity of hearing your very eloquent testimony.

I have a question about what you might call redemption. That has been mentioned here. Let's take the context of the times—20 years ago. The Vandiver administration was in office. Judge Bell was assisting him in a legal capacity.

Judge Bell has freely admitted that he is not a leading liberal, but he was a moderate. The schools were kept open is the point of his testimony, as I gathered it here the other day.

But at the same time, let's assume for the sake of the discussion that Judge Bell has grown and is more sensitive, as he has testified to, to the problems of the minorities. This is partial redemption, if you want to call it that.

Let's get on to the situation of his having experienced this growing, both past and as it will continue. What do you say to those who suggest that, as a result of this experience in the committee, and the Congress and the public having called his attention to these past possible insensitivities, once he gets in office he will tilt the other way? He will be perhaps more sensitive. Is that a risk you are not prepared to run? I would be interested in your comments.

Mr. MITCHELL. I would simply respond by saying I hope you are right.

Senator CHAFEE. I am not predicting anything. I am just presenting a hypothetical.

Mr. MITCHELL. I hope that you are correct. If, indeed, there is a real manifestation of being born again—politically, not in terms of religion—then I will be glad to ask for an opportunity to come before this committee and say that I made a mistake. But you go by a record. You go by a life performance.

In everything else that we deal with in this Congress, we look at a man or woman or Member of Congress and evaluate them, not be-

cause of one speech that they have made, but how they performed for 7 years in the Senate or 20 years in the House.

The record—I am sorry, Senator—the record causes me not to be hopeful.

Senator CHAFFEE. Another point, as I understand it, is that we are going to have testimony here from some gentlemen who were active in the NAACP at that time in Atlanta during the school segregation experiences and attempts to desegregate.

It is my understanding that those gentlemen are going to testify that Judge Bell provided a very effective role as far as the community was concerned.

What is your answer to that anticipated testimony, since it will come from blacks who were there on the spot, as I understand, at the time, and who were themselves on the firing line, as it were?

Mr. MITCHELL. I know there will be some black people speaking in support of Judge Bell. I neither condemn them nor hate them because they are going to speak. I understand why.

Even now, despite all the advances that have been made in race relations and under the law in this country, even now for most black people, it is still a survival game. How do we survive politically? How do we survive in the economic sphere? How do we just cling onto survival?

I can understand that people will have various approaches in terms of the best method to survive. I think that is what happened in Zimbabwe. We have seen evidences of this in Zimbabwe, in the Union of South Africa. Some blacks have accepted apartheid. They are living with it. That is their method of survival; even though they may hate it, they are working through that separate system.

Then there are others who are adamant and openly violent in their opposition to it.

I would respectfully suggest to you, Senator, that because of what this Nation has been in terms of discrimination and prejudice very often blacks have adapted to a survival pattern. This means the acceptance of less than the maximum, less than the best.

I do not condemn anyone for doing that. I applaud their efforts to survive. I would suspect that much of the testimony that you will probably hear has that kind of thinking in the background behind it.

Let me just do one other thing. Earlier on, I indicated what happens to a mayor who might want to oppose his nomination and he is the mayor of his city. He knows that this man will possibly become a member of the President's cabinet. He knows that his city has got to survive because of the flow of Federal funds.

Without any pressure, doesn't he begin to think: Well, now, I can't oppose. Maybe I facilitate the flow of Federal funds by coming up and supporting.

What happens to any local blacks in my State or in your State or in any other State when they feel that their survival is tied to an existing political constellation? I understand why they might appear here.

Does that respond to your question?

Senator CHAFFEE. Yes; that responds to my question.

Mr. MITCHELL. May I make one other point here?

Senator CHAFFEE. Yes.

Mr. MITCHELL. I am also convinced—and I am sorry I neglected to say this—there may be some blacks who just enjoyed such a good

interpersonal relationship with the judge on a one-to-one basis that they feel constrained or compelled because of their friendship. I can understand that. That is a pattern that has existed in this country for a very long time.

You can take some persons who display very strong biases and prejudices against various groups as a collectivity, and they might enjoy excellent interpersonal relationship with one member of that group. So that may also be a basis on which people would appear.

Senator CHAFFEE. Let me ask you one more question if I might.

Taking the situation as it existed then and the problems of the desegregation of the schools in what you might call deep southern States—certainly Georgia is one of them. Compare Georgia with South Carolina, Alabama, Mississippi, for example. When all was said and done, how did the Georgia schools make out during this period as a result of the Sibley Commission, as a result of Judge Bell's efforts?

Was it better in your judgment or worse or no different from these other deep southern States?

I know you are very familiar with Maryland, but I do not think Maryland is exactly a fair comparison. I do not believe the tensions were as high. I may be wrong.

Mr. MITCHELL. Let me respond very briefly with reference to Maryland. I think you are right; the tensions were not as high. But they could have been as high had we had persons in high office who would aggravate a situation to heighten those tensions.

I think Judge Bell indicated that he wanted to keep the schools open in Georgia. That was his primary mission. He kept them open on largely a segregated basis. I would suggest to you, Senator, that, had he and those other three key lawyers that were the strategists, had others stood up even against a Governor, Governor Vandiver, and said that this is the wrong way to do it, then the Georgia schools would have been fully desegregated a long, long time ago. He might be appearing here as a nominee and I might be endorsing him.

You see, the problem for me is this. How do you ever justify and explain, no matter what the situation is, defiance of law? That is what I think Judge Bell advocated, resistance of law.

Maybe everybody was happy during that time the schools were kept open on a segregated basis. But consider, if you will, the psychological damage done to the people of Georgia when they look at their key people in Government and their leading legal minds saying: The way to look at the law is to try to find means by which you contravene the law.

Is not that a kind of psychological price you pay for in the minds of people by having done that?

Let me just say one other thing. I imagine it was tough in Georgia at that time. I do not think Judge Bell or anyone else has been wrong in the description of the kind of turmoil that was down there.

He indicated that he was counsel for the Governor who was a racist. He had to go along with what the Governor said to try to keep the situation calm. Well, we have an example, it seems to me, in the person of a former Attorney General who defied a President of the United States and went through a Saturday Night Massacre. A President is more powerful than any Governor, it seems to me. That man stood up and said: No, I am not going to obey you, Mr. Nixon, because you

are wrong. Who has more respect from this Nation today, that Attorney General or Governor Vandiver?

Senator CHAFEE. Thank you.

Senator KENNEDY. Senator Riegle?

Senator RIEGLE. First of all, I want to especially welcome Congressman Mitchell, who I consider a dear friend and certainly one of the most outstanding Members of the House.

What you said, I think, is an important addition to the body of thought and insight that we have to consider in evaluating this nomination.

Let me ask you this. Was there any attempt by the Carter administration to constructively consult with the Black Caucus on a matter as important as this one, the prospective selection of an Attorney General?

Mr. MITCHELL. To the best of my knowledge, there was not.

Some of the caucus members were honored to go to Plains and to talk with the President-elect. Frankly, we had assumed that on the basis of the conversations with the President-elect there would have been a kind of communication, particularly on critical issues. In this instance I know that I was not consulted. I seriously doubt that any member of the caucus was consulted.

Senator RIEGLE. Was the caucus consulted with respect to any other Cabinet officers ahead of time?

Mr. MITCHELL. That is correct. There has been consultation, not directly with Mr. Carter but with members of the transition team and other high-placed people in the Carter cadre. So there has been consultation; yes.

Senator RIEGLE. I take it not on all of the Cabinet members, but some?

Mr. MITCHELL. On some.

Senator RIEGLE. But clearly there was none in the case of the Attorney General insofar as you know?

Mr. MITCHELL. None.

I must confess I was very disappointed on this. Perhaps, had there been some communication and conversation prior to the recommending of Judge Bell's name, perhaps there were some things in the President-elect's mind that would have caused us not to be sitting here opposing. But, unfortunately, there was no such communication.

Senator RIEGLE. As you rank the importance of the various Cabinet officers to the needs and problems and opportunities of black people in this country, where would you rank the Attorney General?

Mr. MITCHELL. That is the critical position.

You will never achieve integrated housing in this country unless you have an advocate Attorney General who is committed to the idea of integrated communities. You will never achieve the full desegregation of the schools unless the Attorney General and the Justice Department is committed to that, is an advocate for it, and works for it.

In the area of employment, we will never end the massive unemployment that wracks black communities unless you have got an Attorney General there who is battling to enforce the title.

It is the key. Whatever else happens to us, ultimately it goes back to the Justice Department really either to be our friend or our foe or to be neutral.

If you are foe or neutral, then we are lost.

Senator RIEGLE. So you put the Attorney General right at the top of the list?

Mr. MITCHELL. That is the highest priority, Senator.

Senator RIEGLE. The fact that there was not some attempt to counsel about this is all the more troubling to you, I would gather, because of that?

Mr. MITCHELL. Yes; it is.

I cannot speak for all the members of the caucus. I am speaking just for myself on this point. I would have hoped that the President-elect, for whom all of us tried to do so much, would have consulted us on this particular issue.

You know, I can recall during the campaign when I was on airplanes running around the country in various States speaking for the President-elect. I think all the members of the caucus did this. The results of our efforts were clearly evident on November 2.

I am just really disappointed that there was no consultation.

Senator RIEGLE. You know, one thing that comes out of your testimony to me, and also the testimony of Clarence Mitchell yesterday, is that, if we go back to this very troubled period in Georgia which was long ago and clearly took place under a different set of circumstances than we find today, it seems to me woven through your statement explicitly and implicitly both is the following fact. Because things were not done that ought to have been and that might have, damage was inflicted on people that can never be set right.

Lives were altered. Educations were denied. People were hurt. People were killed in some instances. This is because of a set of circumstances that existed at that time. No matter how one goes back and tries to piece together exactly what the interplay of forces was, we do know is that there were a whole number of aggrieved parties for which there really can be no effective remedy.

This is why it seems to me that careful reconstruction of the history in terms of what part people played is significant. The cost was not borne in any even fashion. It fell very disproportionately.

It seems to me the representation the NAACP yesterday, and yourself on behalf of the Black Caucus today, is to raise, among other things, this issue of the effect of public behavior on the lives of people whose names we cannot cite or know necessarily. But it is a very long list. The degree to which that is really relevant now in terms of the decision that we are called upon to make in terms of the fitness to be Attorney General is relevant.

I do not know if you had an opportunity to hear Mr. Bell's testimony in the two previous days. It would be my sense that, in terms of his tone and feeling, whatever his exact role in the past and his intentions so far as the future is concerned, he has been quite explicit. Senator Bayh and Senator Kennedy have touched on this.

He has given some very clear pledges about vigorous feeling about enforcing the law and civil rights legislation and seeing to it that justice is applied in an evenhanded fashion with some degree of advocacy rather than just a passive approach, and so forth.

It still seems to me that the importance of the history here is twofold.

One, it is to establish exactly what the role was. And also, to always bear in mind the fact that, whatever harm may have been done, it is in human terms and cannot be erased. It is a fact. The people who were around to bear those scars do, in fact, bear them.

I think that is a very important fact. It is in my mind.

Mr. MITCHELL. I certainly agree with you, Senator. I just would hope that before there is any final action taken by this committee that we will dig deeply again into that period. I just think we would be derelict in our duty if we did not.

Senator RIEGLE. I appreciate your coming today. I will certainly weigh what you have had to say here.

Mr. MITCHELL. Thank you, Senator.

Senator BAYH [acting chairman]. Senator Heinz, do you have a question?

Senator HEINZ. Thank you, Mr. Chairman. I would like to welcome my good friend and former colleague to the Judiciary Committee.

I would like, if I may, Congressman Mitchell, to ask you to expand upon a part of your testimony. I mean that part dealing with the support of Harrold Carswell's nomination to the Supreme Court.

In particular, you state that—

By the time of the Bell letter, it was abundantly clear to the public that Carswell's record on race relations was abominable.

You were referring to this letter of recommendation of Carswell that was sent?

Mr. MITCHELL. That is right.

Senator HEINZ. Then you go on to say:

Worse still, when the story broke, soon after Mr. Bell was named as the nominee for Attorney General, he denied he knew of Carswell's prosegregation speech, a position he since revised. Yet that speech had been reported in the press several days prior to Bell's January 26 letter, as Mr. Bell subsequently acknowledged.

Could you give us for inclusion in the record the documentation on this, if the chairman concurs?

Mr. MITCHELL. Yes: we would be delighted. I am not at all sure I have it with me, but we will be delighted to submit the documentation to that.

Senator HEINZ. Mr. Chairman, I would request that be made a part of the hearing record if there is no objection.

Senator BAYH [acting chairman]. Without objection, it is so ordered.

Senator HEINZ. Thank you, Mr. Chairman.

[The material referred to had not been received at the time the hearing was printed.]

Senator BAYH [acting chairman]. Senator Sasser?

Senator SASSER. Congressman, I want to thank you for appearing here today. I want to say that I think your views are very worthwhile.

I want to ask one or two very specific questions if I may.

No. 1, do you know Judge Bell personally?

Mr. MITCHELL. No; I do not.

Senator SASSER. Have you ever had an opportunity to converse with him about matters affecting civil rights or about positions the Justice Department will take with regard to enforcing civil rights?

Mr. MITCHELL. No: I have not.

However, Senator, I have been over here for 2 days or more. I have heard his testimony and his pronouncements with reference to how he intends to enforce civil rights if he becomes Attorney General.

Let me further indicate that the general practice of the caucus is that, if it has a matter of concern, we research the record of a person rather than going to the person. Also, let me hastily add that, had Judge Bell merely picked up a phone and said: Look, I'm being considered for the Attorney General; I want to come over and talk with you. I think every member of that caucus would have been delighted to have met with him. This did not transpire.

Senator SASSER. I wonder, Congressman, how we should balance your testimony regarding the capabilities and qualifications of Judge Bell against that of other black Americans from Georgia and that of the distinguished mayor from Alabama. They are familiar with him personally. I think that they will represent to this committee that he will be an exemplary Attorney General.

This is a dilemma for me.

Mr. MITCHELL. I think, Senator, that I addressed that issue in response to the question from your fellow committeeman. I think I pointed out that whether or not you want to admit to it or not, or whether a lot of blacks want to admit to it or not, we live basically under a technique of survival in this country.

There may be blacks who are going to testify on the basis of interpersonal relationships. There may be some blacks who will endorse him because of how they were handled in his courtroom in a professional manner. There may be some others who will testify in terms of: What can we anticipate if he becomes the Attorney General?

I would just suggest to you that survival pattern is going to make people behave in different manners. The weight to be assigned to their testimony versus mine and some others is this: How much is that survival pattern pressured in one region as opposed to another?

Senator SASSER. But we are not going to exclude, are we, the possibility, Congressman, that some of these distinguished black Americans who will testify in favor of Judge Bell might be testifying for him because they honestly believe that he will be a fine Attorney General of the United States?

Mr. MITCHELL. Why, yes. I do not think you should exclude at all. I tried to point out that a lawyer who has practiced before Judge Bell has every right to stand up here and say: Well, when I appeared before him in his court, he treated me as a gentleman. He handed down a fair decision, and this was excellent.

I think that is perfectly legitimate, and it ought to be weighed very carefully against a lifelong pattern and a record that has been displayed here today and yesterday.

Senator SASSER. There was a statement made earlier in your testimony, Congressman, to the effect that there was some feeling on the part of certain black officials and others that there might be some retaliation should you, as chairman of the Black Caucus, or other black leaders appear here to testify in opposition to Judge Bell's nomination.

I think you suggested, in response to questioning from Senator Bayh, that this was a thought that was developed by other blacks who called you with regard to your testimony.

I should say, Congressman, that I, for one—and I suspect this entire committee—would be very interested if any retaliation did take place. I, for one, would be very disappointed and I think very surprised if such a policy were carried out if Judge Bell is confirmed.

Mr. MITCHELL. Well, let me say, Senator, that in the event there is any retaliatory effort or efforts against us, I will be right back before this committee asking for some help.

Let me also further indicate, as I have said to the press many times, that if indeed there is retaliation on the part of the nominee, then that is all the more evidence that he should not have been considered in the beginning to be the Attorney General.

Senator SASSER. But this is in the realm of speculation at this point. I think you said there have been no statements of any threatened retaliation?

Mr. MITCHELL. Certainly not from the Carter administration and not from Judge Bell or any of his close associates.

Senator SASSER. There is one other line of questioning which I would like to pursue. That matter is the question of consultation on the part of the Carter administration with members of the Black Caucus individually and collectively.

It is true, is it not, that there have been a number of meetings with the black caucus by members of the Carter transition team?

Mr. MITCHELL. Yes; that is quite true.

Senator SASSER. In those meetings were specific names of nominees for Cabinet posts discussed?

Mr. MITCHELL. In some instances yes; in others, no.

In some meetings there were requests made that we submit recommendations for various Cabinet posts. In other meetings, information was given to us that various persons were being considered for cabinet posts.

Senator SASSER. Let me say in response to that, Congressman, that I think you are better informed than most members of this committee. I do not know of anybody else who has been consulted.

Mr. MITCHELL. Senator, I do not want to give you the impression that we are better off. Insofar as I know, all of that consultation has not resulted in any person that we have recommended being placed into any position.

Senator SASSER. I sympathize with you on that.

Mr. MITCHELL. I learned early in the game that the surfacing of names was a kind of interesting political technique. You know, you get five names of black people being considered for the spot, and then you contact them. They say: The Carter administration has not contacted us.

So the surfacing of names and consultation has not really meant much in terms of a delivery system.

Senator SASSER. Congressman, thank you very much.

Mr. MITCHELL. Thank you, Senator.

Senator BAYH. Congressman Mitchell, we appreciate your presence. As I expressed to your brother last evening, it is awfully difficult for me to find myself really digging in and asking questions of anybody by the name of Mitchell—with the exception of one fellow who used to be the Attorney General of the United States.

[Laughter.]

I say that because we have fought a number of tough battles together; and we use similar scales. I think, in determining right and wrong and will continue to do that in the future.

I appreciate the fact that in response to Senator Sasser's question you did say that some black leaders in the South might look at this nominee and come to a conscientious determination that reaches different results than you or others.

The survival motive is understandable. I know you well enough that you are not here from the standpoint of survival. I appreciate the fact that you would give others that same credit.

I understand that you were going to introduce some testimony into the record from Congressman Harrington; is that accurate?

Mr. MITCHELL. Yes; I was attempting to wait until all the questions were completed.

Congressman Harrington did set in on the hearings on several occasions and had hoped to testify about two nights ago, I think. But I do have his testimony with me. I would ask consent that it be submitted at this time as a part of the record.

Senator BAYH. Without objection, it is so ordered.

[The prepared statement by Representative Michael J. Harrington referred to follows.]

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., January 11, 1977.

HON. PARREN MITCHELL,
Cannon House Office Building, Washington, D.C.

DEAR PARREN: I appreciate your willingness to offer my testimony in opposition to Griffin Bell for the record of the Senate Judiciary Committee hearings. A copy is enclosed, and additional copies have been delivered to the Committee.

As you know, we were both scheduled to appear today, but the length of the Senators' questioning precluded the appearance of Members of Congress in opposition to the nomination. I would appreciate it if, at the conclusion of your own remarks, you would place my testimony before the committee and make note of my attendance today in an attempt to personally deliver my statement in opposition.

Thank you and good luck on a good cause.

Yours sincerely,

MICHAEL J. HARRINGTON.

Enclosure.

TESTIMONY OF HON. MICHAEL J. HARRINGTON, BEFORE THE SENATE COMMITTEE ON THE JUDICIARY—JANUARY 11, 1977, IN OPPOSITION TO THE NOMINATION OF GRIFFIN BELL

Mr. Chairman, I appreciate the opportunity to testify before this Committee today. But it is with a sense of disappointment that I feel compelled to oppose the announced nomination of Griffin Bell to be Attorney General of the United States.

At the outset, I feel it is important to explain that my opposition does not rest on any doubts about Judge Bell's legal abilities. Nor does his membership in a discriminatory private club necessarily disqualify him from any Cabinet post.

Rather, I feel compelled to test the Bell nomination against the promise raised by the Carter Administration. After the most difficult and testing years of the Sixties and early Seventies, this nation has spoken for new leadership. Public opinion polls, in the aftermath of Vietnam and Watergate, consistently revealed general distrust of government and a loss of faith in its institutions. In this sense, the cornerstone of the 1976 election campaign was a search for a new level of trust and confidence in national leadership.

President-elect Carter promised such a new direction, both by his own professions of policy changes and by his promised quality of Cabinet appointments. It is in this context that I must express my disappointment and doubt about whether Griffin Bell can live up to that standard. At a time when this nation needs force-

ful moral leadership in its Attorney General, we have instead been given a man of questionable personal and legal commitment to the principles of civil rights.

Is it so long after the events of Watergate, and the numerous other examples of government deception and moral equivocation, that we have forgotten the standards that this nation collectively pledged to adopt? Are we already returning to government by moral convenience, instead of commitment, when the nation's highest law enforcement position can be handed to someone whose performance fails to meet even the minimum level we should expect on the crucial national issues of civil rights?

The question of competence is of particular concern here because this nomination serves to test a new President and his Administration's ability to deliver on the promises of a new direction of leadership. It is the special obligation of members of such a President's own party to come forth and take a stand when that President's actions fall below the standards he himself has set. It seriously undermines the goals of the Democratic party—and its renewed claim on national leadership—to remain silent behind a banner of deference to the President's appointive powers. The Senate's Constitutional role of "advise and consent" means at least that it must hold a President accountable to his own standards of excellence and performance. By implication, Members of the House who cannot vote on such a nomination have a responsibility to publicly question a nomination that falls below those standards.

The almost tragic aspect of Griffin Bell's nomination is that it stifles the hopes among President-elect Carter's supporters, many of whom are Black or from other minority groups, for a change in national direction. A country now sorely in need of new, responsible leadership on racial questions has instead been offered a nominee whose legal record and personal conduct inspire serious doubts.

This nomination fits more readily in that class of civil rights appointments offered by the Nixon Administration, which included a Supreme Court Justice whose confirmation (which Griffin Bell supported) would have immeasurably set back the cause of civil rights. Had this nomination of Griffin Bell been offered by Richard Nixon, I have no doubt that many voices now silent would have risen to protest the affront to racial justice. Members of this Committee owe both the nation and the President-elect no less than the same standard of judgment. Blacks, Hispanics and other minorities feel the same tremors of doubt, regardless of a nominee's party of sponsor. Thus, it is much more than a question of whether a President is entitled to the nominee of his choice.

In summary, my purpose in testifying today is to bring to this Committee's attention what I perceive as the most serious deficiency in the Bell nomination. It is not merely a question of a potential Attorney General's performance that must be weighed, although his past record tends to reveal the roots of his thinking. Rather, the Attorney General is a symbol as well as a person, an office as well as an officeholder. In a society committed to the civil rights of all minorities, it is essential that such a symbol be one of moral and legal leadership.

Minorities in this country have too frequently suffered from the actions of those in positions of power who held no personal commitment or understanding of their cause. To reverse years of "benign neglect" and worse, we need strong and unquestioned leadership to fight for equal employment opportunity, equal educational opportunity, equal housing opportunity and equal treatment under the law.

The record of Griffin Bell stands as a symbol of insensitivity rather than commitment on these questions. His confirmation would continue the national leadership vacuum on civil rights that has led to racial strife in the North as well as the South. It would deprive this nation of a timely opportunity to install in the Justice Department an Attorney General with an unswerving dedication in both personal and official conduct to the principles of our civil rights laws. It is for these reasons that I oppose the nomination of Griffin Bell to be Attorney General of the United States.

Senator BAYH. If there are no further questions, I thank you, Mr. Mitchell.

Mr. MITCHELL. Thank you.

Senator BAYH. I observe that the hearings have gone on for some time. This has caused some inconvenience to some of the prospective witnesses. I hope they will understand that the duration and the in-

tensity of the examination of the witnesses is evidence that we on this committee take this nomination very seriously and will continue to do so.

I say that as a predicate to observing that I have a request here from one of our witnesses, Mr. Leon Jaworski, who has a plane to catch. I had planned, through instruction of the chairman, to go down the witnesses list as it has been published because everybody has been on notice.

I see that Mr. King, Mr. Cochrane, and Mayor Cooper all are here and are ahead of Mr. Jaworski on the list. Would they have any objection if we moved Mr. Jaworski up so he can catch a plane?

[Mr. Joseph L. Rauh, Jr. stood up.]

Senator BAYH. Yes, Mr. Rauh?

Mr. RAUH. I thought that I was next on the list.

Senator BAYH. I see you are. I apologize. I know you well enough that if you feel strongly, you will say no. Do you have any objection if we hear Mr. Jaworski next?

Mr. RAUH. Of course not.

Senator BAYH. Thank you.

Mr. Jaworski, we appreciate your presence. As the temporary chairman here, I would like to observe that this is not your first appearance before this committee in this room.

This committee and, I think, our entire country owes you a deep debt of gratitude for the service you provided as special prosecutor at a time our country, our system of jurisprudence, and our governmental structure as a whole was being sorely tested.

We are indebted to you for the way in which you responded to that emergency.

TESTIMONY OF LEON JAWORSKI, HOUSTON, TEX.

Mr. JAWORSKI. You are very generous, Mr. Chairman, on two scores: First, by permitting me to testify at this hour; and, second, in your very kind and gracious comments regarding my efforts.

I have a prepared statement. I may depart from it; I will indicate when I do so. I think that a part of the testimony that I offer through this statement is perhaps particularly significant in view of some of the questions that were asked by some of the Senators.

Mr. Chairman, my name is Leon Jaworski. I am a practicing attorney with the firm of Fullbright & Jaworski with offices in Houston, Washington, and London.

I first became acquainted with Judge Griffin Bell when I was requested by the then chairman of the American Bar Association's Federal Judiciary Committee, Bernard G. Segal, in July 1961 to investigate Judge Bell's background, experience in the practice of law, his character, and other matters pertaining to his qualifications to sit as a member of the U.S. Court of Appeals for the Fifth Circuit.

It was stated to me by Chairman Segal that the then Deputy Attorney General, Nicholas Katzenbach, had requested, on behalf of then Attorney General Robert Kennedy, that the committee conduct such an investigation and that if Griffin Bell was found to be qualified, it was the intention of President Kennedy to appoint him. Inas-

much as I was the member on the American Bar Association's Standing Committee on the Federal Judiciary representing the fifth circuit, the matter was placed in my hands for the mentioned investigation report and recommendation.

I am attaching to this statement, as exhibit A, a copy of the report that I filed on July 25, 1961. These reports go to each member of the committee and based on it, as well as other information that may come into the hands of members of the committee, a vote is taken.

Judge Griffin Bell was unanimously approved for a well-qualified rating and this was reported to Deputy Attorney General Nicholas Katzenbach and, in due course of time, Griffin Bell was appointed to the judgeship on the Fifth Circuit Court of Appeals.

When these reports are compiled and forwarded to the chairman of the Standing Committee on Federal Judiciary of the ABA, they are considered confidential. Because of the lapse of time, the fact that Judge Bell is no longer on the court and for other good and sufficient reasons, I have removed the stamp of confidentiality from this report. Before doing so, I had the approval of the present president of the American Bar Association.

Although Attorney General Robert Kennedy did not undertake to dictate or to influence the findings of the American Bar's Committee on the Federal Judiciary, I was aware—as were others on the committee—that the Attorney General did not want appointees to the Federal judiciary who had any notions or concepts of racial discrimination.

Griffin Bell, at that time, was not personally known to me and I had to depend upon others to furnish me the information that would enable me to come to a conclusion as to his qualifications.

The report speaks for itself, but it is of significance that Judge Bell, after full investigation, was given a well-qualified rating. This is a somewhat unusual rating for one who has not sat as a judge before. The only rating given higher than this one is that of "exceptionally well-qualified" and it is given—as I think you know—in rare instances and then where unusual experience, such as a period of service on the bench, exists.

Had not both Attorney General Robert Kennedy, as well as Deputy Attorney General Nicholas Katzenbach, been convinced that Griffin B. Bell was fairminded and possessed no racial prejudices, his name would never have been submitted to the President of the United States for appointment.

May I add that had I believed, as a result of the investigation I conducted, that Griffin Bell was biased on the issue of civil rights, I would have found him to be disqualified and so recommended to the committee.

May I also add that, after witnessing his performance on the bench and the personal experiences I had with Judge Bell at the time of the contempt proceedings against Ross Barnett for violating the orders of the Fifth Circuit Court of Appeals in the admission of James Meredith to an institution of higher learning in Mississippi, I am convinced that my appraisal of him in 1961 was accurate.

Without entering into a prolonged review of the unfortunate conditions that existed, resulting in the bringing of civil as well as criminal contempt proceedings against Gov. Ross Barnett and Lt. Gov. Paul Johnson, let me allude briefly, if you please, to a summary of

what is important in the consideration given to Judge Bell's qualifications for service as Attorney General.

Because Attorney General Robert Kennedy, Deputy Attorney General Nicholas Katzenbach, Assistant Attorney General Burke Marshall, and Assistant Attorney General John Doar had personal contacts and made official decisions relating to the position of the U.S. Government in the Meredith matter, Attorney General Robert Kennedy asked me to serve as Special Assistant Attorney General in representing the U.S. Government in these contempt proceedings.

The chief judge of the Fifth Circuit Court of Appeals, Judge Elbert Tuttle, approved of this appointment. I was called to Washington to talk with Attorney General Kennedy and with Nicholas Katzenbach and concluded it was my duty to serve in this capacity. I did so as a public service, without compensation.

Before the Fifth Circuit Court of Appeals, sitting en banc, considered the criminal contempt proceedings, a number of hearings were held relating to the taking of steps to restrain Governor Barnett and others from interfering with the admission of James Meredith to college. It so happened that in the early stages of the issuing of restraining orders and injunctions, Judge Griffin Bell was one of three judges who participated in these proceedings.

I have attached, as exhibit B, to this statement that part of the Fifth Circuit Court's own recitation of these early proceedings, restraining orders and injunctions, which antedated the bringing of the contempt proceedings and which were embodied in the certification by the Fifth Circuit Court to the U.S. Supreme Court.

In several instances before the final hearing, which the court entertained en banc, Judge Griffin Bell was one of three members who sought to restrain and to enjoin Ross Barnett, Paul Johnson, and administrative officials from barring James Meredith from the university.

The certified question, you may recall, related to whether Governor Barnett should be entitled to a jury trial. By a narrow margin, the U.S. Supreme Court held that so long as the term of confinement, if found guilty, would not exceed 6 months, the respondent would not be entitled to a jury trial. It is significant to point out that both Mr. Justice Black and Mr. Justice Douglas joined in the dissent, urging that the respondent, Governor Barnett, be accorded a jury trial, regardless of the punishment.

When the certified question was answered by the U.S. Supreme Court and the matter was returned to the U.S. Court of Appeals for the Fifth Circuit, the Fifth Circuit Court, with Chief Judge Elbert Tuttle still presiding, appointed Judge Griffin Bell to represent the court in working with counsel on both sides in determining the procedures that should be followed in bringing the respondents, Barnett and Johnson, to trial.

Chief defense counsel, Charles Clark, now a member of the U.S. Court of Appeals for the Fifth Circuit, and I, along with my associates, Burke Marshall and John Doar, had informal conferences with Judge Griffin Bell for the purpose of determining the procedures to be followed and to agree on a solution of some of the problems that existed as to how the trial was to be conducted and where, and so on.

Judge Bell was completely objective and fairminded in the consideration of the various matters that arose in these conferences and

I represent to this committee that, as the chief representative for the U.S. Government in these conferences, I was completely aware of how judicious was the conduct of Judge Bell and the fairness with which he approached the problems that arose. I believe you will agree.

It was an accolade to Judge Bell that he was selected by the court as a whole and, especially, by Chief Judge Elbert Tuttle to work with counsel in the solution of some of the problems that existed prior to trial and after working with Judge Bell in several sessions, I could well understand why this selection was made.

As conferences were being held and steps taken to set up the trial for criminal contempt, Gov. Ross Barnett and others made full compliance with the court's orders and purged themselves of the contempt for which they had been cited. The court then determined that there was nothing to be accomplished by holding the trial. One morning I received a copy of an order of the court dismissing the case.

I am here for only one purpose. I offered to come to represent to you that in my experience with Judge Griffin Bell he exhibited openmindedness, fairness, and a commendable judicial approach. I have never known him to do other than to embrace the rule of law and, after all, this is the test to be applied to appraising the work of a man on the bench.

In sitting as a judge, he may have made mistakes. But I would like to ask what judge is there who has not made mistakes?

I think that we would all want to bear in mind that apparently justices on the U.S. Supreme Court have made mistakes from time to time, at least in the eyes of their successors. Otherwise, we would not have the changes in judicial decisions that we see from era to era.

Even beyond that, I know that I have had occasion to change my views on matters of policy, and of law; and if Judge Griffin Bell had not had occasion to do so, I would not be enthusiastic about him as the Attorney General.

I have brought for the record today statements which include such parts of the court's own certification that recite what happened in the *Meredith* case. These recitations point out the activities of Judge Bell as a member of the three-judge court and also as a member of the court sitting later en banc.

Thank you very much, Mr. Chairman.

Senator BAYH [acting chairman]. We will, without objection, put in the record the additional matters that you have attached to your statement.

[The exhibits referred to follow.]

EXHIBIT A

AMERICAN BAR ASSOCIATION,
STANDING COMMITTEE ON FEDERAL JUDICIARY,
July 25, 1961.

BERNARD G. SEGAL, Esq.,
1719 Packard Building,
Philadelphia 2, Pa.

FORMAL REPORT—GRIFFIN B. BELL, OF ATLANTA, GA., UNDER CONSIDERATION FOR THE
U.S. COURT OF APPEALS FOR THE FIFTH CIRCUIT

DEAR BERNIE: Griffin B. Bell was born in Sumter County, Georgia, on October 31, 1918. He received his Bachelor of Laws degree cum laude at Mercer University in Macon, Georgia. He was admitted to the Bar in August of 1947.

From 1948 to 1951 he was an associate in the firm of Lawton and Cunningham of Savannah, Georgia; in 1952 and 1953, a partner in the firm of Matthews, Maddox & Bell of Rome, Georgia; and from 1953 to the present time he has been a partner in the firm of Spalding, Sibley, Troutman, Meadow & Smith of Atlanta. Since January 1, 1959, he has served as a senior partner and as the managing partner in the last-named firm, which consists of twenty-two lawyers. Smythe Gambrell, former President of the American Bar Association, and others tell me that his several changes in firm connections since 1948 were due to the attention he attracted as a capable trial lawyer, and that successively he vastly improved his prior position. His present firm, the Spalding-Sibley firm, is known as one of the outstanding law firms of Georgia. He has had no prior judicial experience.

Mr. Bell has enjoyed an av rating in Martindale-Hubbell since January, 1958. His chief forte is trial work, and it was his excellence in this category that attracted the attention of other firms and ultimately brought him into the Spalding-Sibley firm. During the past five years he has practiced predominantly in the Federal courts, including trial and appeals in antitrust, patent, contract and tort cases. In his early practice he had experience in the handling of criminal cases.

In arriving at the conclusions below recorded, I have consulted, among others, the Chief Judge of the United States Court of Appeals for the Fifth Circuit, an Associate Justice of the Court of Appeals for the Fifth Circuit, the United States District Judge who sits at Atlanta, a former President of the American Bar Association, a member of the House of Delegates of the American Bar Association, three members of the American College of Trial Lawyers who know Mr. Bell quite well and have opposed him in litigation, and Charlie Bloch, my predecessor on this Committee.

Mr. Bell is characterized as an indefatigable worker, very intelligent, of high integrity, very personable, a good administrator, and a capable trial lawyer. He is extremely popular with the judges and his fellow members of the Bar. I am assured that he is fair-minded and possesses a temperament exceptionally well-suited to service on the Bench. He has had considerable appellate experience in the Federal courts, having handled some twelve major cases on appeal in the Circuit Court of Appeals in recent years.

There has been no adverse report on Mr. Bell, although one of my sources of information opined that a place on the Circuit Court of Appeals should require more years of experience than Mr. Bell possesses. I do not share this view, in that Mr. Bell in his fourteen years of law practice has enjoyed an unusually active and abundant professional life.

Mr. Bell has been active in professional organizations. For two years he served as Chairman of the Joint Committee on Practice and Procedure of the Atlanta Bar Association; he has served as President of the Younger Lawyers' Section of the Georgia Bar Association, has been active on various committees in the Georgia Bar Association, and in 1960 and this year served as the Chairman of the Georgia Delegation of the Judicial Conference for the Fifth Circuit Court of Appeals, the latter being a distinctive recognition of his stature at the Georgia Bar. He presently holds the position of Chief of Staff to the Governor of Georgia, which is an honorary position usually given to a lawyer who is a close friend of and personal counsel to the Governor.

Mr. Bell is a member of the Baptist Church and served as Vice Chairman of the Board of Deacons of his church for the years 1959 and 1960. He is Past President of the Mercer National Law Alumni Association and Past National Vice President of the Mercer University Alumni Association. He entered the Army as a draftee in November, 1941, and was discharged as a Major in January, 1946. He is married and the father of Griffin Bell, Jr., age 17.

In my informal report I had concluded that because his practice of law had been confined to fourteen years (and not knowing its full extent), Griffin B. Bell might not be entitled to more than a "qualified" rating for the position of United States Circuit Judge. After a more extensive investigation, I am prepared to upgrade this rating and to recommend to my fellow members of this Committee that the rating be "well qualified."

With best wishes, I am

Sincerely yours,

LEON JAWORSKI.

EXHIBIT B

The following excerpts are taken from the certification of the question of the United States Supreme Court of Appeals for the Fifth Circuit to the Supreme

Court of the United States on the issue of whether Ross Barnett and Paul B. Johnson, Jr. were entitled to trial by jury in the criminal contempt proceedings pending against them.

U.S.A. v. Ross Barnett & Paul Johnson, Jr.

Relations Law Reporter, Fall 1962, p. 745.

3. On September 18, 1962, this Court (Judges Brown, Wisdom and Bell), after first ascertaining from the District Court that it declined to enter an order in this form, entered its order allowing the United States to appear in the case. The order recited "It appearing from the application of the United States, filed this day, that the interests of the United States in the due administration of justice and the integrity of the processes of its courts should be presented in these proceedings * * *," the order then prescribed:

"It is ordered that the United States be designated and authorized to appear and participate as *amicus curiae* in all proceedings in this action before this Court and by reason of the mandates and orders of this Court of July 27, 28, 1962, and subsequently thereto, also before the District Court for the Southern District of Mississippi to accord each court the benefit of its views and recommendations, with the right to submit pleadings, evidence, arguments and briefs and to initiate such further proceedings, including proceedings for injunctive relief and proceedings for contempt of court, as may be appropriate in order to maintain and preserve the due administration of justice and the integrity of the judicial processes of the United States."⁴

4. On September 20, 1962, the United States filed an application for further injunctive orders. This verified petition brought to the attention of this Court the fact that on September 19, 1962, in *Meadors et al v. James Meredith et al*, the Chancery Court, Second District, Jones County, Mississippi, Cause No. 19365, had issued its injunction against Meredith, the Board of Trustees, various University officials, the United States Department of Justice, the Federal Bureau of Investigation, the Office of the Attorney General of the United States, and all United States Marshals and Deputy Marshals. The order of the State Court enjoined and prohibited such persons "from doing anything or performing any act, the execution of which is intended to enroll and register the Negro, James Meredith, as a student in the University of Mississippi; * * *."⁵

The Government's application also advised the Court of the enactment by the Mississippi Legislature approved by the Governor of Mississippi Senate Bill No. 1501, the effect of which made it a criminal offense for a person to " * * * attempt * * * to enroll in any of the institutions" of higher learning specified in the Act.⁶ The application likewise informed the Court of the action of the Justice of the Peace Court in Jackson, Mississippi, on September 20, 1962.

On September 20, 1962, this Court (Circuit Judges Brown, Wisdom and Bell) entered its further injunctive order. It recited that "This matter is now before this Court on Petitions for Orders supplementing this Court's Order of July 28, 1962, to (1) restrain the enforcement of S.B. 1501 * * * ; (2) restrain any compliance with or enforcement of the injunction issued by the Chancery Court of Jones County, Mississippi, dated September 19, 1962 * * * ; (3) restrain the arrest of James Meredith on a conviction had in the Justice of the Peace Court in Jackson, Mississippi, on September 20, 1962 * * * ." The court further recited that it "appearing that S.B. 1501: the aforesaid injunction issued by the State Court and the conviction of James Meredith each constitute an interference with and obstruction of this Court's injunction of July 28, 1962." This Court thereupon ordered "that the appellees-respondents, their agents, employees and persons acting in concert with them or persons having actual notice of this order, including law enforcement and public officials in Mississippi, State, County and Municipal * * * " were enjoined and restrained from "(1) enforcing * * * the provisions of S.B. 1501 against James Meredith, or any other persons * * * . (2) taking any steps to effectuate the conviction and sentence on September 20, 1962, in the Justice of the Peace Court in Jackson, Mississippi * * * ; or arresting him or any other persons including federal officials or taking * * * any other action which has the purpose or effect of interfering with the enrollment of James

⁴ Also published 7 Race Relations Law Reporter, p. 748.

⁵ This injunction is reported at 7 Race Relations Law Reporter, p. 749.

⁶ See 7 Race Relations Law Reporter, p. 750.

Meredith * * *. (3) taking or refraining from taking any action to comply with or to enforce the injunction issued by the Chancery Court of Jones County, Mississippi, on September 19, 1962 * * *." The order concluded with this paragraph: "(4) This order is not intended to limit the authority of the District Court to proceed with respect to the matters referred to in paragraphs (1) and (2) of this order."

5. On September 21, 1962, the United States, *amicus curiae*, filed an application seeking an order to show cause why the Board of Trustees and certain administrative officials of the University should not be held in civil contempt.

This Court (Circuit Judges Brown, Wisdom and Bell) on September 21, 1962, entered its show cause order. The order recited that it "appearing from the application of the United States, *amicus curiae*, filed this day, that each of the defendants above named has failed and refused to comply with the terms of this Court's order of July 28, 1962, and are presently persisting in such failure and refusal * * *." Thereupon the Court ordered that the named trustees "appear personally before this Court on September 24, 1962, at 11 a.m. o'clock in the Courtroom of the United States Court of Appeals for the Fifth Circuit in New Orleans, Louisiana, to show cause, if any they have, why they should not be held in civil contempt." The order went on to provide, however, that since the Court was advised that the District Court had ordered the named University administrative officials to show cause and that a hearing on the alleged contempt was then fixed for hearing in the District Court for that day (September 21, 1962), the application to that extent was denied.⁵

6. On September 22, 1962, this Court (Circuit Judges Brown, Wisdom and Bell) entered its further show cause order. The order recite that it " * * * appearing from the verified petition of the United States of America, that [the named administrative officials of the University of Mississippi] together with the other respondents named in this Court's order of September 21, 1962, have failed and refused, and are now failing and refusing, to comply with this Court's order of July 28, 1962, * * * by failing and refusing to enroll and register, and admit to continued attendance at the University of Mississippi, James Howard Meredith * * *." The Court thereupon ordered the named administrative officials "be made additional respondents to the show cause order of this Court of September 21, 1962, and that they show cause, if any they have, on September 24, 1962 * * *." At New Orleans why they should "not be held in civil contempt by reason of their failure and refusal to obey the order of this Court of July 28, 1962, and the other orders of this Court requiring the respondents to register and enroll and admit to continued attendance at the University of Mississippi James Howard Meredith."

7. By a majority vote of all of the active Judges, this Court convened (Judge Cameron absent on account of illness) en banc for the hearing of September 24, 1962, at New Orleans. On that hearing the Court heard extensive testimony bearing upon actions of the Board of Trustees, the administrative officials of the University, Governor Ross Barnett and other governmental officials showing that up to that time Meredith although he had presented himself for admission, had not been admitted to the University as previously ordered by this Court. This evidence included the fact of the Board of Trustees' resolution of September 20, 1962, by which the Board invested Governor Barnett "with the full power, authority, right and discretion of this Board to act upon all matters pertaining to or concerned with the registration or non-registration, admission or non-admission and/or attendance or non-attendance of James H. Meredith.

21. Thereafter this Court en banc (Judges Cameron and Gewin dissenting) entered its order to show cause on January 4, 1963. The show cause order contained the following charges and order:

Probable cause has been made to appear from the application of the Attorney General filed December 21, 1962, in the name of and on behalf of the United States that on September 25, 1962, Ross R. Barnett, having been served with and having actual notice of this Court's temporary restraining order of September 25, 1962, wilfully prevented James H. Meredith from entering the offices of the Board of Trustees of the University of Mississippi in Jackson, Mississippi, and thereby deliberately prevented James H. Meredith from enrolling as a student in the

⁵ The order is published in 7 Race Relations Law Reporter, p. 752.

⁶ The District Court on Sept. 21, 1962, after hearing found each of the University officials not guilty and discharged the contempt proceedings. 7 Race Relations Law Reporter, p. 754.

University pursuant to this Court's order of July 28, 1962; that on September 26, 1962, Paul B. Johnson, Jr., acting under the authorization and direction of Ross R. Barnett, and as his agent and as an agent and officer of the State of Mississippi, and while having actual notice of the temporary restraining order of September 25, 1962, wilfully prevented James H. Meredith from entering the campus of the University of Mississippi in Oxford, Mississippi, and thereby deliberately prevented James H. Meredith from enrolling as a student in the University, pursuant to the orders of this Court; that on September 27, 1962, Ross R. Barnett and Paul B. Johnson, Jr. wilfully failed to take such measures as were necessary to maintain law and order upon the campus of the University of Mississippi and did, instead, direct and encourage certain members of the Mississippi Highway Safety Patrol, Sheriffs and deputy Sheriffs and other officials of the State of Mississippi to obstruct and prevent the entry of James H. Meredith upon the campus of the University that day.

That on September 30, 1962, Ross R. Barnett, knowing of the planned entry of James H. Meredith upon the campus of the University of Mississippi, knowing that disorders and disturbances had attended and would attend such entry, and knowing that any failure of the Mississippi Highway Patrol to take all possible measures for the maintenance of peace and order upon the campus could and would result in interferences with and obstructions to the carrying out of the Court's order of July 28, 1962, wilfully failed to exercise his responsibility, authority, and influence as Governor to maintain law and order upon the campus of the University of Mississippi; and that all of said acts, omissions and conduct of Ross R. Barnett and Paul B. Johnson, Jr., were for the purpose of preventing compliance with this Court's order of July 28, 1962, and of the similar order of the United States District Court for the Southern District of Mississippi, entered on September 13, 1962, and were in wilful disobedience and defiance of the temporary restraining order of this Court entered on September 25, 1962.

It is ordered. That Ross R. Barnett and Paul B. Johnson, Jr., appear before this Court in the courtroom of the United States Court of Appeals for the Fifth Circuit in New Orleans, Louisiana, on February 8, 1963, at 9:30 o'clock a.m., to show cause, if any they have, and why they should not be held in contempt, and should either of them at said time and place show such cause, either by pleading not guilty to the charges contained in the application of the United States, or by other means, he shall thereafter appear before this Court for hearing upon said charges at a time and place to be fixed by the Court.

The Chief Judge of this Court then directed the Clerk, for convenience in handling all matters relating to the criminal contempt proceedings to assign a new number, No. 20,240, and a new caption, "United States v. Ross R. Barnett and Paul B. Johnson, Jr.," to the case.

Pursuant to notice form the Court, respondents filed nine motions and the State of Mississippi filed one motion to be considered at the hearing. These motions may be briefly described as follows:

1. Motion and plea of the State of Mississippi to dismiss the proceedings as being in violation of the Tenth and Eleventh Amendments to the Constitution.

Senator BAYH [acting chairman]. Mr. Jaworski, I do not need to go on at length about the importance of sensitivity in the area of human rights. It is probably the most important responsibility of the Attorney General to be an advocate in support of these.

I assume from what you said, from your personal and professional contact with Judge Bell, you feel he would meet the standard of being an advocate in support of and to protect the rights of those citizens whose rights might be threatened?

Mr. JAWORSKI. I do so, sir.

Senator BAYH. Are you familiar with the *Cisneros* case, the *Corpus Christi* case in 1972?

Mr. JAWORSKI. I took a look at a few of the cases.

Senator BAYH. I bring that up because that was used by a preceding witness. I am not familiar with all the facts of the case, but that was used by a preceding witness who opposed Judge Bell as evidence of his lack of this kind of sensitivity.

Mr. JAWORSKI. I just do not think conclusions can be drawn on the basis of a result of any one decision.

I would be inclined to agree that, if there existed a pattern of decisions that indicated a certain attitude consistently, this is something that could be taken as an index of that man's heart and mind. But just because a lawsuit is lost, one cannot draw that conclusion.

Certainly, those of us who believe strongly in civil rights are bound to be in error at times in the positions we urge. It would be very strange if we were always correct.

So the fact that there can be pulled through the computer or otherwise some decisions in which Judge Bell did not hold with the advocates who espoused certain positions on civil rights just does not impress me at all.

Senator BAYH. Senator Mathias?

Senator MATHIAS. Mr. Jaworski, it is a great pleasure to welcome you back to this committee. I am happy that you are here under happier circumstances than some of the previous visits that you paid to us.

Mr. JAWORSKI. I want to take occasion again to thank you, as I also want to thank Senator Bayh and others present here, for having permitted me to come to you and sit down and talk with you during the dark days that I faced.

This committee as a whole backed me up to the point that I was enabled to do the job that I was asked to do.

Had it not been for this committee under a special arrangement, my fate may well have been otherwise.

Senator MATHIAS. I do not think this is an occasion to simply trade compliments, but I think the committee had a certain basic confidence in you which made it possible for all of us to do a hard job at a hard time.

What I suppose we are here for today—and I said this last night to Clarence Mitchell and to Judge Bell, who were both in the room at the time—is to avoid another hard time like that. Whatever the disposition of this nomination may be, we want to make a record which is so clear that the guidelines will be apparent to the Attorney General, his subordinate in the Justice Department, to those of us who have some oversight responsibilities here, and to the whole American public.

We examined Judge Bell's record in some detail. There was a colloquy yesterday in which I did not participate. I may not be able to quote directly; the clerk has not yet provided us with the transcript of yesterday's testimony. It went to the point that the nominee was about the only qualified lawyer that they could find. Perhaps some of the other members of the committee might be able to quote that more correctly. I have trouble with that—

Senator BAYH. If I may interrupt my friend?

Senator MATHIAS. Yes.

Senator BAYH. I think that question was directed to the judge. He was quick to point out that he did not believe that was the case. He thought there were others who were equally well-qualified and perhaps better qualified than he, but the President had a number of considerations that he based his final judgment on.

I do not think it would be fair to suggest that that was the conclusion.

Senator RIEGLE. Would the gentleman yield on that point?

Senator MATHIAS. Yes.

Senator RIEGLE. That did arise on two occasions. The first time around was on the first day, for which there is a transcript. There was a response by Judge Bell to the effect that they had a hard time finding candidates. They had some difficulty in filling this particular job.

When we got into that in more detail is the second day; it developed that there had been a list of people put forward and that he himself had advanced a list. In the end, he was asked to accept this job.

But it is clear from the early part of the record they were having some difficulty with the process in coming up with enough people that met whatever the criteria were that were being applied. We never did really pin that down.

Senator MATHIAS. That is very helpful. That is exactly the part of the colloquy to which I was referring.

Mr. Jaworski has been a president of the American Bar Association. He has had an extremely distinguished career and practice of law in his home State and throughout the country.

He might be able to enlighten the committee a little bit on whether you think, given the standards of excellence that are available in the American Bar Association and the American bar, that this nominee is on a par with the most excellent candidate that could be submitted to this committee.

Let me say that there are tough questions ahead. I do not have to tell you that. I mean questions in the business field and antitrust questions. We may not be handling them right at all. Maybe even the approach that we are making to monopoly questions may be wrong. We have not done serious legislating in that field for 100 years.

There are many questions which affect the lives of every American that are going to be dealt with by the next Attorney General. So the complexity of these problems surpasses anything which we have had experience with in the past.

Given the kind of standard of performance that is going to be required and given the kind of standard of excellence among lawyers at the bar with whom you have been associated throughout your life, what sort of a rating would you give this nominee?

Mr. JAWORSKI. Senator Mathias, as you were speaking I was running through my mind possible appointees. I would be prepared to say that Judge Griffin Bell, despite my high regard for him, as you have heard, is not necessarily the best-qualified man that could be found.

At the moment, there comes no one to mind. But I would be surprised if there were not others in this land who, in my experience, who may well be better qualified.

But I am convinced that he is a thoroughly qualified man for this post.

I know one thing that has not been mentioned. I would be shocked if this man ever yielded to pressure. He is just not built that way.

The other matter that I am completely certain of is that he would seek the best advice that he could get. If he were in doubt about a

course to follow, in doubt about what his judgment should be, he is not an arrogant or opinionated individual.

I can say this further. Among the lawyers who practice in the fifth circuit and some of them who came from other circuits. Judge Griffin Bell was rated very, very highly, perhaps as highly as any member of the court.

I want to add one matter that indicates how difficult his position was when he sat so early in his experience as a member of the court that had to deal with the Meredith matter. There were two judges, both from the South, who dissented in the granting of these restraining orders and these injunctions and took the action that was taken.

So, despite his background and despite the fact that he comes from the South, he had the courage of his convictions. As a consequence he went right down the line in the issuance of these restraining orders in support of the rule of law.

So I come back to this. I am satisfied that he is qualified. I am satisfied he would make a very fine Attorney General. I cannot conceive of anything ever going on in this office that has gone on in the office as we recently became familiar with.

This is about the best way I can answer the question, Senator.

Senator MATHIAS. The orders that you refer to were orders that would clearly have been dictated by the existing opinions of the Supreme Court?

Mr. JAWORSKI. I think you mean by decisions that had antedated the Meredith experience?

Senator MATHIAS. Yes.

Mr. JAWORSKI. The Supreme Court decision that I referred to came along after these orders that Judge Bell had entered. But, you see, they all related not only to civil contempt but criminal contempt also.

A court has to go quite far in order to determine that these restraining orders should be issued and that this contempt action should be taken. He never did waver on that. He had his own views with respect to where the trial should be held. I am not so certain that he was not right about it. He felt it was a matter that should go back to the district court and that the district court should hold the contempt proceeding rather than the circuit court. He was not the only one who felt that way about it.

Senator MATHIAS. One of the problems that you faced as special prosecutor was that a lot of troublesome issues had been swept under the rug. After the initial sweeping, any good housekeeper is embarrassed about that; so you begin to cover up, cover up, cover up. Instead of grappling with the problem initially, you put it aside and cover it up.

Do you think that there is any likelihood of that occurring in the Justice Department with Griffin Bell?

Mr. JAWORSKI. I think the likelihood of that happening, whether Judge Griffin Bell is the appointee or whether someone else is, I just cannot conceive of that happening. This is due largely to the position that this group and other groups have taken in Government.

I think the leaning might be in the other direction of perhaps not facing an issue quite as boldly, for fear that somebody might misunderstand. I have said once or twice before that one of the results

of Watergate may have been that the pendulum, in the eyes of some people, has gone too far in the other direction.

I am talking about a feeling of unwillingness to hold certain conferences with certain people except under certain conditions, for fear that it might be misunderstood.

I just cannot conceive, and I would be terribly disappointed if Judge Griffin Bell ever participated in any of the conduct that—

Senator MATHIAS. I want to make this clear. I am not talking about criminal conduct. I am talking about postponing dealing with a problem which later can be found extremely troublesome. In other words, are you going to grasp the problems?

Mr. JAWORSKI. You used a good expression. It was swept under the rug; it was forgotten deliberately in the hope that it would pass on.

Senator MATHIAS. I do it myself sometimes. One hopes that a thing will go away, or on the road to Damascus you will have some sudden light. Lo and behold, it becomes a pretty big problem.

Mr. JAWORSKI. I am a little bit surprised at your confession, Senator Mathias, because I did not find you that way when I was talking with you about some of the Watergate problems.

I guess it is a way of life. Probably all of us are guilty of it at times.

You were one of the first senators to whom I had to talk in confidence. I came to see you because I felt a need to talk with you. It was when I first discovered what I was up against. I had the same privilege with the entire committee and the same privilege with Senator Bayh.

Senator MATHIAS. Thank you, Mr. Jaworski.

Senator BAYH. [acting chairman]. Senator Riegle, do you have a question?

Senator RIEGLE. I appreciate your coming and sharing your thoughts with us today.

I want to be just a little bit clear on the depth of your firsthand knowledge of Judge Bell. I listened to most of your statement; I was called out of the room for the first part of it.

Can you, in just a brief summary, give me a clear sense for the length and depth of the insight, based on your own personal experiences and chances to see him in action?

Mr. JAWORSKI. Thank you, sir.

I shall explain my principal participation in the practice of law over the last 10 years. I argued more cases in the Fifth Circuit Court of Appeals than anyone from my part of the country, as far as I know. This came about, Senator, because in a number of instances where a case had been lost in the lower court by other attorneys, I was then employed to handle the case in the Fifth Circuit Court of Appeals and several times in the U.S. Supreme Court because my work had been swinging in the direction of appellate court arguments.

As you know, the court has been sitting in numbers of three unless they had a very unusual case. But in quite a few of these I did draw Judge Bell as one member of the court. I never would know until I got ready to argue the case. This was their system.

What impressed me was how fair he was in getting to the heart of a question. He has studied the case in advance. He always asked very penetrating questions, sometimes questions that were a little embarrassing to my side of the case they were so penetrating.

So I did form a very high regard for him as a judge. There has been no personal relationship in the sense of personal visitation in my home, or in clubs together, whether integrated or not. We just did not have that sort of a friendship.

I saw him from time to time. I saw him twice within the last year. Once was at the convention in Atlanta. He participated primarily in putting on this case that was reenacted. It was *Rea v. Preston*. It arose out of the Boston Massacre. The American Bar put this on. We had an English judge and an English council and so on. I was one of the defense counsels. Judge Bell was chairman of the particular committee that was responsible for that.

The other time I saw him was, very frankly, when I was pushing my book. I was in Atlanta. The owner of a bookstore there—may I add that it does not mean anything to me personally because all of this goes to a charitable foundation.

But I was there. Without my knowing it, the owner of the store had invited for lunch several of the lawyers in Atlanta. He was one of them.

Senator RIEGLE. I think the last time you and I saw one another was on an airplane when you were going somewhere in the process of speaking in behalf of your book.

Let me ask two other things.

Senator BAYH. Excuse me. Would the witness care to mention the name of his book so we could have that in the record at this time? [Laughter.]

Mr. JAWORSKI. It is "The Right and the Power." It is an interesting name because in one of the letters that I write to the White House when I was in a very, very stern exchange with them over my right to sue the President, which I had been promised and on which the White House was reneging, I used that expression. I had the right and the power to take him to court.

The publishers thought that was a good title to use. Readers Digest Press is one of the publishers.

Senator RIEGLE. I think it is an established tradition of the committee that whenever a distinguished author appears here and mentions the book, there is an obligation to send each member of the committee an autographed copy. [Laughter.]

Mr. JAWORSKI. I think that can be arranged, as a matter of fact.

Senator RIEGLE. There has been some discussion over the last 2 days about the difference between what is required for someone who would be a good judge in applying the rule of law versus someone who would be in a different kind of job capacity as Attorney General, where there is a whole advocacy kind of responsibility that is quite a different kind of responsibility than one who tries to sit between two competing views.

I wonder, as you had a chance to view Judge Bell, how you think he would handle that kind of a change of role, because it is quite a different job. I think, particularly given your own references even to the sort of tortured history of the Attorney Generalship over the last several years, that there is a clear hope by most Americans that someone will step into that job who will move forward fairly but aggressively.

I am wondering if you think he can make that transfer role, as different as those two things are. What would be your judgment on that?

Mr. JAWORSKI. Senator, had he spent his entire professional career on the bench, I would be less enthusiastic about his appointment for the very reason that you mention. But he practiced law before that time. He was a very successful trial lawyer prior to that time. Prior to the time he went on the bench, he had practiced for 14 years.

In addition to it, he has returned to a very outstanding group of lawyers. He is a partner in that firm. He has been practicing since he left the bench.

I have seen judges and have argued to judges, and I think you have had the experience where you felt that it would have been very helpful if they had a little bit more experience on the outset and not just sitting on the bench the whole time.

I think it is an important point that you raise.

But he has had the experience on both sides. I think he could approach these matters objectively without letting his judicial experience interfere. It can be a great help, of course, because you learn a lot being a judge that you can apply helpfully and constructively.

Senator RIEGLE. Does that mean that you in your own mind are prepared to take the leap of faith in terms of feeling that this would be an activist, forceful leader as an Attorney General?

Mr. JAWORSKI. I think he would. I think he would do his duty. I do not think that you would ever find him taking a position or doing something just for the sake of making headlines. We have all been through those experiences. I probably could have made one or two that I did not make when I was in the Watergate process.

I do not think he would do that.

Senator RIEGLE. The other thing that is a question that arises in some minds is something that I think you touched on in passing. That is the whole matter of independence.

You said that you felt that this was one individual that would not be subject to pressure and would resist it.

There is a bit of a problem with respect to the history, I think, in the terms of the way this nomination came about. Senator Mathias made some reference to it. The selection process, however it went forward, ended up where someone who had something of an acquaintanceship was picked for this post.

I think we are all especially sensitive to any kind of relationship of that kind in light of recent history. One of the things that I am especially concerned about is this issue of independence and whether we have here someone tough enough who would be entirely willing to draw the line quickly and firmly in each and every case where that needed to be done.

I think if there is even the suggestion that friendship might play any part—connection through the law firm or any of that—and I think that this particular candidate starts with that as a burden because of the appearance of the connection. I am sure he feels that. I feel it for him. I feel it for the country.

It seems to me that that carries with it then sort of an added measure of responsibility to be so clearly independent that no question could ever really arise about it.

I wonder if you think, based on your experience, that he would meet the kind of test, that kind of exceptionally high standard of independence?

Mr. JAWORSKI. I really think that the judicial experience of which you and I spoke moments ago help give him independence. No man, as all of us know, is more independent than a Federal judge, especially one who sits on the court of appeals.

I would be surprised if he did not follow a course of complete independence as Attorney General.

I say this to you, sir, if I may inject a note personally. I would not think of going to this man and asking him for anything that I did not believe was 100 percent just and fair. I can tell you further that, even at that, it would not surprise me if he turned me down.

This is my own appraisal of the situation.

Senator RIEGLE. I appreciate your taking the time to come and to give us your advice and thoughts. I also want to take the occasion again to thank you for your previous service to this country of ours.

Mr. JAWORSKI. Thank you very much.

Senator BAYH [acting chairman]. Senator Chafee?

Senator CHAFEE. Mr. Jaworski. I want to join in welcoming you here and thinking you for the wonderful service you gave to our country.

I would like to ask you one question. You reviewed in some detail the Barnett case that you dealt personally with Judge Bell on. Are there any other civil rights cases, particularly dealing with school integration, that you are familiar with that he made decisions on?

Mr. JAWORSKI. Not in the sense that I could discuss them with you now; no, sir. I have not reviewed them. I did not have the time to review them.

I can say this. The many people with whom I have talked about the rulings of the Fifth Circuit Court of Appeals—I know that I have heard no criticism at the time these decisions were rendered of Judge Bell. I have just not heard that. I have heard criticism of other judges who sat on that court.

Senator CHAFEE. I thought one of the points you made was an interesting one. That was the high regard with which the presiding judge of the circuit had for Judge Bell. I guess it was Judge Tuttle who assigned him to work out the procedures in connection with the Barnett case.

That was rather unusual, was it not? Judge Bell had just briefly been associated with the fifth circuit at that time.

Mr. JAWORSKI. The other members of the court had a very, very high regard for him. I heard a number of them speak of him from time-to-time.

If you will notice in exhibit A, which is the investigation that I made of Judge Bell before he was appointed to the court, I mention in there, not by name, but several of the judges and lawyers who had held positions of one kind or another with whom I talked before I made this report. One of these was Judge Elbert Tuttle, who has one of the finest records of courage of any judge on that court.

Judge Elbert Tuttle I refer to at the top of page 2 as the Chief Judge of the United States Court of Appeals for the Fifth Circuit.

He was among those I consulted in connection with determining Judge Bell's qualification. Judge Tuttle felt very favorably inclined to Judge Bell. Of course, this had a whole lot to do with my determination of the eventual rating that I suggested for him.

Senator RIEGLE. Thank you very much.

Mr. JAWORSKI. You are welcome.

Senator BAYH. Senator Sasser?

Senator SASSER. Mr. Jaworski, I, too, want to join with my colleagues in thanking you for the splendid service that you rendered this country as Special Prosecutor in years past.

I would like to ask you one or two questions which deal with the qualifications of Judge Bell for the office of Attorney General.

During the course of these hearings, Judge Bell has been asked many, many questions by the members of this committee with regard to what he would do in the event that he is confirmed and becomes Attorney General of the United States.

My question to you, sir, is this: Can we rely on the representations that Judge Bell has made here over the last 2 days as to what his course of conduct would be as Attorney General?

Mr. JAWORSKI. In my opinion you could. I personally would rely on them.

Senator SASSER. I notice in a letter which you have appended to your testimony and marked exhibit A, dated July 25, 1961, addressed to the American Bar Association—

Mr. JAWORSKI. The Chairman of the Standing Committee on the Federal Judiciary; yes, sir.

Senator SASSER. It dealt with Judge Bell's qualifications then to be named to the Fifth Circuit Court of Appeals.

Mr. JAWORSKI. That is correct, sir.

Senator SASSER. Also, I note that you, in this letter, analyzed his professional qualifications and his personal qualifications. On page two you say: "I am assured that he is fairminded and possesses a temperament exceptionally well-suited to service on the bench."

Mr. JAWORSKI. How did you come to the conclusion that Judge Bell was a fairminded man?

Mr. JAWORSKI. By talking to these gentlemen, who I do not identify by name but I identify as Chief Judge, U.S. Court of Appeals—who was Tuttle—and Associate Justice of the Court of Appeals for the Fifth Circuit. I honestly have to say at this late date I do not know who that was.

The U.S. District Judge who sits in Atlanta was another; and I am not certain that I could identify him by name. I talked to Smythe Gambrell, the former president of the American Bar Association, who is from Georgia.

I talked to a member of the house of delegates to the American Bar Association; I cannot tell you who that is. I talked with three members of the American College of Trial Lawyers, which you know is a group where a man has to practice actively in court for 15 years before he can be invited. You do not join it; you are invited. They must have handled some of the most important litigation in the State.

A number of these, as I point out, opposed him in litigation. Then I mention one man by name; that is Charlie Bloch, who was my

predecessor on this committee and who is really tough. He came from Georgia, also. Charlie Bloch is one of those who gave him a high recommendation.

Of course, not knowing Mr. Bell, I had to rely on what these people told me about him. But the very office that they hold, I think, is of significance.

Senator SASSER. Mr. Jaworski, there has been no allegation, as I recall the testimony, that Judge Bell was not qualified by way of professional standards or that he was not qualified by way of personal integrity.

However, there have been some suggestions that he may not have moved as fast as some witnesses would have wished in advancing the civil rights of black Americans in the State of Georgia.

I ask you, sir, in your investigation in preparation for making this recommendation in 1961, did you find any evidence of racial bias on the part of Judge Bell?

Mr. JAWORSKI. There was none mentioned to me, sir. If there had been, I could not have written this recommendation. I also would have had to disclose it to Attorney General Robert Kennedy and to Deputy Attorney General Nicholas Katzenbach. I knew how they felt about this matter. I would have disclosed it to them if there had been the slightest reference in that respect.

You remember also that the FBI makes its own investigation. It reports to the Attorney General on the man that is to be nominated. I have not seen and no one else on our committee would see that particular report of that investigation.

But remember also, Senator, that everyone who wanted to comment because they felt that Griffin Bell was one to have such a bias was free to report that either to the committee or the Attorney General.

I do not think Griffin Bell would ever have been appointed if it had been reported by reliable sources that he was unfair in the area of racial matters.

Senator SASSER. Mr. Jaworski, this letter was written on July 25, 1961. I assume that it was well known at this time that the Justice Department under Attorney General Kennedy intended to launch out in the field of civil rights, advancing the rights of black Americans in this country. Is that true?

Mr. JAWORSKI. That is certainly true.

May I add this, too, Senator. I cannot say that it happened in this instance. I do know of another instance in which I made the investigation of a man in the South who was up for appointment as district judge where Attorney General Kennedy on his own picked up the telephone and made some inquiries to make certain that there were no evidences of racial bias. But whether it was done in this case I do not know.

Senator SASSER. So I think we can conclude from that that Attorney General Robert Kennedy and the Justice Department were particularly sensitive to any accusations of racial bias that would be leveled against a prospective nominee for the Federal bench.

Mr. JAWORSKI. I do not think that it existed then. Obviously conditions were different. It is very difficult for some people to fully appreciate what the situation was like in 1961.

My close friends would not speak to me for many, many months for taking this assignment. It really was no more than standing up for the rule of law.

It is hard to put it back in the proper perspective.

Senator SASSER. There has been much talk before this committee about Governor Vandiver and the years in Georgia in the late fifties and early sixties. You, sir, lived through those years in the South. It might be helpful for us if you could characterize those years and put them in perspective.

Perhaps that would put us in a better position to judge Judge Bell's conduct during those years.

Mr. JAWORSKI. Well, I assume that probably the most reliable testimony I could give along those lines is to allude to some of my own experiences, as embarrassing as it is, and to some of the situations that occurred at that time when I accepted this appointment which I felt I had to do. It was a matter of being a lawyer and one who believed in upholding the law and upholding court decrees.

I found, much to my surprise, that there were not only many laymen but many lawyers who had such strong feelings of racial prejudice that they were absolutely unforgiving about one's actions in doing no more than upholding the law.

There were resolutions introduced in the legislature of my State condemning me for having taken this particular position. It was almost unbelievable. The announcement was made on a Saturday. The Bluebonnet Bowl game was being played that afternoon. The papers in the morning carried the headline story that I was to serve as Special Prosecutor. That afternoon you would have thought that I had the plague. Nobody would speak to me.

As I say, I would have withdrawn from the law firm if the law firm had found it objectionable; but there were clients who withdrew their business from the firm. There were a number who would not have anything to do with me.

But I must say this. I could go on and describe those conditions; today they seem almost unbelievable. The gratifying phase of it is, is that after a period of time these people no longer found it to be the terrible act of conduct they thought I was guilty of at the time. They began to change their minds. They saw reason for having done what I undertook to do.

These were difficult days. They were almost unbelievable. Men who are highly regarded today and who are in public office and who serve well in those days were so prejudiced and so determined to be unfair to members of the black race that one almost has to blink his eyes to disbelief that they are the same individuals.

Senator SASSER. And you are describing, Mr. Jaworski, conditions of less than 15 years ago?

Mr. JAWORSKI. Yes.

I did not say too much about this, but the fact that Griffin Bell, coming from Georgia, was taking actions that the appointee from Alabama would not take and the appointee from Mississippi would not take. I say that is one of the real tributes to be paid to Griffin Bell.

He stuck with this Meredith case from beginning to end and did the thing that was right. Yet he had two colleagues who had the same difficulties that he probably had in his State who did not do so.

Senator SASSER. This was the case of James Meredith trying to enter the University of Mississippi, the first black man to enter that university?

Mr. JAWORSKI. Correct.

Senator SASSER. Thank you, Mr. Jaworski. I look forward to reading your book.

Mr. JAWORSKI. Thank you, sir.

Senator BAYH. Senator Heinz?

Senator HEINZ. Thank you, Mr. Chairman and Mr. Jaworski.

I would like to ask you some questions about your letter of July 25, 1961, the formal report on Griffin Bell. At the end of it you say that "because his practice of law had been confined to 14 years" you were not sure whether he was entitled to more than a "qualified" rating. Then you say, "After a more extensive investigation," you felt he was "well qualified."

Is it fair to say then that this report represents a tremendous amount of work on your part?

Mr. JAWORSKI. Yes, sir.

May I explain how we go about doing it. Initially, we do not even go into the idea of a formal report if a pulse feeling of a few men in whom we have confidence indicates that the man is probably not going to be considered qualified.

So what we do first is I make a verbal report in which I say, "Well, he is qualified." When I get a green light as a member of the committee, then comes the intense investigation. This means that you call on these individuals, whose names I do not give but I list their titles, and visit with them personally or by telephone. Usually we do it personally.

We assure them that what they say will be kept in confidence except as far as the members of the committee are concerned. Of course, if there are some things said that are of the type that are completely personal, the report would not have been presented to you today. But you see there is nothing along that line in there.

I can only say that my initial investigation, the quick one, which enabled me to talk to only a few, out of an abundance of precaution I was not willing to say that he was well-qualified. I was willing to say he was qualified.

But after going into it—and I might say we spent several days doing this—I was convinced that he was "well qualified."

Senator HEINZ. Did you consult with either the Georgia branch of the NAACP, or the national NAACP? I would think that would have been one of the few organizations that might fall into the category of public interest law firms at that time. Or any other public interest type of law firm?

Mr. JAWORSKI. There were almost none at that time.

Senator HEINZ. The NAACP did exist I would think.

Mr. JAWORSKI. I was trying to recall; I did in some instances. I don't recall whether I did in this instance or not. I do know that I raised the question with each one of these people with whom I talked.

Of course, I was particularly impressed with what Judge Tuttle had to say because I knew exactly what his feelings were. He had felt the brunt of criticism for his attitude toward the civil rights of others.

Senator HEINZ. You do mention on page 2, and I quote.

He presently holds the position of Chief of Staff to the Governor of Georgia, which is an honorary position usually given to a lawyer who is a close friend of and personal counsel to the Governor.

Did you talk to the Governor or any of his people or any people who might be close observers of the Georgia political process about Judge Bell's service in that regard?

Mr. JAWORSKI. I did not regard the Governor as a good source of input as to Judge Bell because they were so close. Here he was the chief of staff. I knew what the Governor would say. I did not think the committee would pay very much attention to that.

I was more interested in certain individuals in whom I had full faith of getting a true reading and not one based solely on friendship. I mean, for instance, a man like Smythe Gambrell. He is former president of ABA. He has his own large law firm in Atlanta. One might say a competitor of the firm with which Judge Bell has been associated.

He gave him the highest recommendation. He is a man who is quite critical of individuals. He is a task master and he demands much of his fellow lawyers.

Senator HEINZ. How did you evaluate Judge Bell's services as "chief of staff and as a personal counsel to the Governor"?

Mr. JAWORSKI. Well, the only way I could do it is by what people in Atlanta like Smythe Gambrell told me.

Senator HEINZ. Did you talk to them about his service as chief of staff and as personal counsel to the governor?

Mr. JAWORSKI. Oh, I cannot say definitely, sir, that I did. I would be surprised if I had not. Certainly it would have been one of the matters that I would have inquired about.

Senator HEINZ. It is an important issue obviously of concern to the committee.

Mr. JAWORSKI. It is. It is mentioned specifically for the purpose of pointing out that—

Senator HEINZ. So you are not prepared to say, if I understand you correctly, and I do not intend to put words in your mouth, but what I understand you to say is that you are not prepared to say that you specifically asked anybody to evaluate his service to the Governor as his chief of staff. You may have, but you are not prepared to say that you did?

Mr. JAWORSKI. That is correct. I will add, however, if you will permit me, that I feel that I did do so. My best judgment is that I did.

Senator HEINZ. It would be very hard, Mr. Jaworski, to challenge your integrity.

Mr. JAWORSKI. Thank you, sir.

I do not want to enlarge upon what I specifically remember. I certainly do not want to enlarge upon what I put in this report.

Senator HEINZ. Let me ask you a different kind of question. Probably more than any American, maybe living or dead, that I am aware of, you certainly understand the potential for tragedy that exists if a Justice Department is not fearlessly and faithfully independent.

One sort of independence that we can, and I think we should, demand from the Justice Department and the Attorney General is political independence. I think you personally know what the experience of the 8 years has meant to this country as well or better than anybody else.

Yesterday I asked Judge Bell whether he thought this committee should hold a negative presumption against any nominee for the post of Attorney General who worked in the campaign of the President he will serve.

I would like to ask you that same question. Should this committee, as a matter of principle, demand that the President send us a nominee who has worked in politics and who has worked in his own campaign?

Or should we set a higher standard?

I am reminded of two things. The present Attorney General, Mr. Levi, when questioned in the hearing record, apparently had a fairly nonpolitical history. Indeed, it could not be demonstrated that he had voted in the primary of either the Republican or Democratic party since World War II.

You have indicated that there very well may be people as well or better qualified than Judge Bell for the post of Attorney General. Should this committee seek someone who has not had a personal political relationship with the new President?

What is your feeling about that very sensitive question? It involves setting a standard, of course.

Mr. JAWORSKI. I had thought about this subject some because, as you may recall, there had been an espousal of the elimination of the campaign manager, for instance, from consideration for the post of Attorney General. That has been a matter that has been mentioned and has been fostered by some groups.

I did not join in doing that.

I have to tell you very frankly that, if I were the President of the United States of America, I would want as my Attorney General someone in whom I had complete faith and trust and not a stranger. That just happens to be my own reaction to it.

Senator HEINZ. Is the only way you can achieve complete faith and trust to have them work in a political campaign?

Mr. JAWORSKI. No; but that is the best way. You know the man.

I am not saying it was necessary for him to work in the campaign. I am saying that I would want a man whom I knew personally, whose habits I knew, whose thinking, and whose character I knew something about. This is what I would want if I were President of the United States.

Senator HEINZ. Thank you, Mr. Jaworski.

Senator MATHIAS. Mr. Chairman, I have just one followup question.

Mr. Jaworski, in responding to Senator Heinz and I believe earlier to either Senator Sasser or Senator Riegle, you mentioned the name Charlie Bloch. Is that Mr. Charles Bloch of Macon, Ga.?

Mr. JAWORSKI. I believe it is; I believe you are right, sir. He was my predecessor on this committee serving the fifth circuit.

Senator MATHIAS. In your discussions with Mr. Bloch—I know of no way you could have known this if he did not tell you—did he ever tell you that he and Griffin Bell had been members together on the committee of four lawyers who were appointed by Governor Vandiver to travel, well, the headline here in the Atlanta Constitution for November 18, 1958, says, "Legal Aides Scan Dixie for Ideas," looking for ways to implement the policy which in those days was called massive resistance?

Mr. JAWORSKI. He never did mention it, nor did I ask any questions about it. I did not know Charlie Bloch that well.

The reason that I talked to Charlie Bloch is because he was my predecessor on this committee.

Senator MATHIAS. As I say, there is no way you would have known it if he did not tell you.

But I think it is perhaps pertinent to the inquiry of this committee that some of your information reflected in your letter of July 25, 1961, did derive from the source Charles Bloch.

Thank you very much, sir.

Mr. JAWORSKI. Thank you, sir.

Senator BAYH. Are there further questions?

Senator Thurmond?

Senator THURMOND. We have several committees going on among which I had to divide my time.

We are delighted to have you here. I have not had a chance to hear your statement.

Is it your opinion that Judge Bell is qualified to be Attorney General of the United States?

Mr. JAWORSKI. It is, Senator Thurmond.

Senator THURMOND. Do you feel he is able, a man of capacity?

Mr. JAWORSKI. I do, sir, and have so testified.

Senator THURMOND. Do you feel that he is a man of character and integrity?

Mr. JAWORSKI. Yes, sir.

Senator THURMOND. Do you feel that he is a man who would be fair and not permit discrimination?

Mr. JAWORSKI. I do feel so. I have put into the record a statement here, Senator, that deals with that. I point to his conduct during the days of the Meredith admission and all the controversy in Mississippi and his conduct on the bench and his rulings and the opinions he wrote, all of which show he was completely objective and fairminded in that situation.

Senator THURMOND. Do you recommend his approval by this committee to be Attorney General?

Mr. JAWORSKI. I would, if the committee asks for my opinion. I have certainly in all of my testimony indicated that I thought he was qualified and that he would make a good Attorney General.

Senator THURMOND. Do you know anything against him as to why he should not be confirmed for Attorney General?

Mr. JAWORSKI. About the only thing I know, Senator, is something I alluded to earlier. I think he decided one case against me, if I recall correctly. I have not quite forgiven him for that yet. [Laughter.]

But I must say we like to talk about the cases that we have won, as you know. We seldom mention those that we lost.

Senator THURMOND. Do you feel he made a good record as a circuit court of appeals judge?

Mr. JAWORSKI. I do.

Senator THURMOND. Do you feel his decisions were fair and just to litigants?

Mr. JAWORSKI. I am not familiar with all of his decisions. Those that I am familiar with, I do think that he was fair. I had a very high regard for his demeanor on the bench. He always was well prepared.

He was very thorough and very searching in his questions.

I never saw him in any way show some of the arrogance and some of the attitudes that some Federal judges show.

Senator THURMOND. Could you tell us his reputation while he was a circuit court of appeals judge?

Mr. JAWORSKI. He was highly regarded by his colleagues. I have mentioned this. He also was very highly regarded by the bar, those that I heard express themselves. I never heard anything that was derogatory of him.

Senator THURMOND. So far as you know, he is a man of unblemished character and capacity, and you feel he would make a good Attorney General.

Mr. JAWORSKI. I do feel that; yes, sir.

Senator THURMOND. That is all. Thank you very much.

Mr. JAWORSKI. You are welcome, Senator.

Senator HEINZ. Mr. Chairman, might I be recognized?

Mr. BAYH. Yes.

Senator HEINZ. Mr. Jaworski, I have one last question.

Although I was not a member of the Senate and therefore not of this committee at the time, I guess this committee confirmed for the post of Attorney General two people who turned out to be something of a national disappointment as well as to me.

Is there anything we should do as a committee, are there any unusual tests we should apply to make sure that we do not have another John Mitchell kind of situation; or, for that matter, some of the similar situations that we had?

I appreciate what you have said, that a President should have someone in the post of Attorney General in whom he has full faith and trust. We did have such faith and trust in President Nixon and his two Attorneys General.

Did we make a mistake somewhere as a Judiciary Committee? Is there anything we can do to prevent such mistakes, or are there certain limitations that ultimately result in the final responsibility being placed with the President who makes the nominations to us?

Mr. JAWORSKI. In the first place, I think that this committee is to be highly commended for the manner in which it has conducted this examination and these hearings. I have followed it in the newspapers for the last few days. It has been very thorough and it is still going on. Apparently you are very thorough before reaching your final determination.

I do not know how you can do more than that. You are calling whatever witnesses who seem to have some input on this matter. In the final analysis you sit as fact finder. You have to make up your mind yourself as to how you regard the testimony of some of these witnesses.

I do not know what else you can do. You can conduct these hearings for months, and you are still not going to be able to dig up everything about a man who may be considered for appointment. If you look far enough, you would find some things that you would not be very happy over that I had done in my life.

So you come finally to exercising your judgment based upon the best evidence that you can accumulate. That is exactly what you are doing now.

Senator HEINZ. Thank you.

Senator BAYH. Are there any more questions?

Mr. JAWORSKI. I want to thank all of you for your courtesies and for the kind and generous statements that you have made.

Senator BAYH. Our next witness is Mr. Joseph L. Rauh, Jr., national vice president of the Americans for Democratic Action.

While Mr. Rauh is coming, I might, as temporary chairman, suggest a course of action that I would like for us to follow over the lunch period.

We have scheduled a Democratic conference for 12:30 p.m. What I would like to suggest is that we go until 12:30 p.m. and then ask Mr. Rauh if he can suspend if he has not concluded and then come back at 1:30 p.m. in an effort to try to get on with these hearings.

If there are no objections, then that is what we will do.

Mr. Rauh, it is good to see you again, sir. You have been here many times and offered your services to the committee. It is good to see you again.

TESTIMONY OF JOSEPH L. RAUH, JR., NATIONAL VICE PRESIDENT, AMERICANS FOR DEMOCRATIC ACTION

Mr. RAUH. Thank you, Mr. Chairman. My name is Joseph L. Rauh, Jr. I am a former national chairman and presently vice president of Americans for Democratic Action.

We appreciate this opportunity to testify on behalf of ADA during the confirmation hearings of Griffin Bell for Attorney General.

Let me say I have been before this committee for the ADA but equally often for the Leadership Conference on Civil Rights. I just want to make clear that I am not here in my capacity as general counsel of the Leadership Conference on Civil Rights. There are many organizations in the Leadership Conference that have not taken a position on Mr. Bell's confirmation.

I say that only because there sometimes is confusion on this. I want to make clear that I do not represent the Leadership Conference in appearing here today.

It is with considerable reluctance and only after careful consideration that the ADA decided to oppose President-elect Carter's nomination of Mr. Bell to be Attorney General.

Senator BAYH. Excuse me. Mr. Rauh, do you have a prepared statement?

Mr. RAUH. No; I do not. I am sorry.

I spent my time reading cases. I should have done it, and I apologize to the committee because it would be better. I have my notes and have brought some cases along that I want to refer to.

I think I can be more useful on the legal side than if I had not read the cases.

Mr. BAYH [acting chairman]. We will listen closely.

Mr. RAUH. Thank you, sir.

I do have some notes, so if I appear to be reading—

Mr. BAYH. Handle your testimony as you see fit. I am sure you will do it very capably.

Mr. RAUH. It is with considerable reluctance and only after careful consideration that ADA decided to oppose President-elect Carter's nomination of Mr. Bell to be Attorney General.

The American people want a new President to have a honeymoon. He is entitled to a honeymoon. Furthermore, ADA supported Governor Carter and everything that comes to mind supports the idea that we would not want to do this.

But we feel, after studying his civil rights record, that there is no other honorable course, especially in view of what our ally in civil rights for 30 years, the NAACP, has done. I would feel that if we were not here supporting the NAACP position, we would have gone back on our long tradition.

So the executive committee of the ADA met in emergency session last Friday and decided that we would take this position along with the NAACP.

Over 100 years ago, Edward Bates, who served as Attorney General under Abraham Lincoln wrote,

The office I hold is not properly political but strictly legal. It is my duty, above all other ministers of state, to uphold the law and to resist all encroachments from whatever quarter of mere will and power.

We have just come through a period where unprecedented abuses by Attorneys General have become manifest. Two Attorneys General have been prosecuted as a result of the Watergate scandal. The times demand a Justice Department based on a moral and ethical code rather than as an instrument of will and power.

In light of recent experiences, it is more essential than ever that the Attorney General, as Mr. Bates said, uphold the law and resist encroachments from whatever quarter and preserve both the reality and appearance of equal justice for all.

The post of Attorney General has always been a sensitive one. The selection of an Attorney General of unassailable character and quality has been a prime concern to the Nation. Governor Carter proposed last January that the Attorney General be an "independent office with a 5- to 7-year term to protect it from political influence."

Clearly, this is a reform that would take some time to consider and implement. But the intent of that reform, echoed again from Governor Carter before the Democratic Platform Committee, was as follows: "The Attorney General should be removed from politics and barred from all political activities."

I think it is clear that Mr. Bell was a part of Governor Carter's political group. He comes from a law firm. It is a very distinguished law firm. It would usually be on the other side from anything I would usually be in, but it is still a very distinguished law firm.

If Judge Bell is a supporter and contributor, it is just the opposite of what was promised.

The case has often been made that the Attorney General must be an individual who has the absolute trust of the President. We do not question the need for such a relationship. Rather, we believe that this trust should be based upon the past record that shows that the Attorney General would uphold the law and Constitution without any reservations.

Instead of that, we got the usual political appointment.

Some of you will remember that when we testified on Supreme Court judges we made the point that you use a different standard of review for Supreme Court judges than a Cabinet member.

When I was here against Judge Haynsworth, Judge Carswell, and Justice Rehnquist I made that point. There was considerable interest in it. One might say that that should be thrown back at us now because we are here against a Cabinet member and especially so against a Cabinet member at a time of the President-elect's honeymoon.

I have been thinking about that at considerable length. It seems to me that possibly the standard of review for an Attorney General should be somewhat different than for other Cabinet posts. That, in fact, was what Governor Carter was getting at when he proposed a certain independence.

I guess both because of Watergate and what it meant and because this is the chief law enforcement officer of the country and maybe, to add a third thing, because the President could not possibly get into the details of the Justice Department, you have to put a higher standard on your review.

I cannot picture your reviewing some of the other cabinet positions with the same high standards that I believe you should put for the candidate for Attorney General.

Senator BAYH. Could I interrupt for a moment. I know you are not reading from a prepared statement. I know you respond very well extemporaneously.

This has been a matter that has caused me some concern. I am not just looking at the particular task before us but upon other nominations, both before this committee and to other posts in the Nixon Cabinet where I have supported nominees that I felt displayed the same kind of sensitivity or lack thereof that I thought the man who appointed them did.

I say that, perhaps, without complete objectivity. But that was my assessment.

Is it fair to say, Mr. Rauh, that despite the dual standard that you have described earlier and perhaps now an in-between, third standard for the Attorney General because of a sensitivity of the issues, that that Attorney General is nevertheless going to have to carry out the broad principles enunciated and laid down by the President?

Mr. RAUH. Yes, sir, that would be correct.

I was suggesting, however, that it is not possible for the President to keep the same degree of control over the law enforcement agency with all its complexities that he may be able to do in other cabinet posts.

I was also suggesting that it is a mistake to look at the Attorney General as the President's lawyer. The President has a lawyer in the White House now for matters of that kind.

The Attorney General is the public's repository of their confidence in law and order. It seems to me that a higher standard might well be suggested. I brought this up—

Senator BAYH. Excuse me. I want to make certain that the question is clear.

I do not ask the question predicated on the belief that the Attorney General is the President's lawyer. He is the man in charge of administering justice to the United States.

I accept, frankly, your standard that the Attorney General should—

Senator MATHIAS. Mr. Chairman, could I interrupt there?

I think the record ought to be fair to Judge Bell on this. I pressed him rather closely on the question of whose lawyer he would be. He came down with the answer that he would be the people's lawyer.

Senator BAYH. Yes; I think there is no question about that. I share that.

Senator MATHIAS. I think the record ought to be fair on that.

Senator BAYH. I trust that the question and response were not trying to be unfair to the nominee, but to try to establish criteria that maybe some of us can be comfortable with.

I accept your suggestion that, because of the sensitivity, the Attorney General's post should be looked at and scrutinized more carefully.

I do not think that a President of the United States can handle all the details. If you look at all the complicated problems that confront consumers, industry, labor, and the energy problem; there are so many details. The job of a Cabinet official is so complicated that a President cannot follow all of those matters closely.

In the broad policy areas of justice, as to whether we enforce our laws, the kinds of laws that you and your organization have championed and a number of the committee have helped get on the books, if those are going to be enforced rigidly and the standard is going to be met, I think that comes from a commitment of the President of the United States. He makes that commitment. He orders his Cabinet officials to follow these criteria.

That to me is fundamental.

Mr. RAUH. I agree with what you just said. I do not consider it inconsistent with placing a higher standard of review on the Attorney General.

Senator BAYH. Excuse me for interrupting.

Mr. RAUH. On the basis of the standard of review that we are suggesting, ADA opposes the confirmation of Mr. Bell for each and all of the following reasons.

First, Mr. Bell demonstrated a distressing lack of candor on the very day he was appointed and before the President-elect appointed him.

Let me give you the two examples there. They have been mentioned before. I will go over them quickly.

When asked about his letter on Judge Carswell to this committee, he said: "I did not endorse him. I wrote a letter to the President saying I thought he was qualified to be on the Supreme Court."

I ask anybody to read the letter as it appears in the hearings of the Carswell matter on page 322 and not feel that was an endorsement. I am not going to take the time of the committee to read it because I am sure that you are all familiar with that letter.

I have never read in my life a more lyrical endorsement of a man. I thought it was a lack of candor to quibble that way.

Second In referring to the letter, he said, "It turned out that he—Carswell—had made a speech I did not know about when he was running for the State legislature. Of course, I did not know about that at the time."

I think the question was asked here, that letter came out 5 days before, and was in every newspaper all over the country. Judge Bell has now admitted that that could not have been the fact.

I think this committee rejected, or the Senate did, Judges Haynsworth and Carswell on that very point: Lack of candor.

I think we did a brilliant job in exposing their civil rights record. But if I really think what finally ended their confirmation, it was more their lack of candor even than their civil rights.

In addition to the lack of candor, this Carswell incident points out something else. What kind of judges are we going to get from a man who could have felt that Judge Carswell was the possibility, a perfect appointment to the bench?

I know one answer that is given by Judge Bell is that they are going to do it on merit. "Merit" is a slippery word.

The question of merit is so mixed up with ideology. If "merit" simply meant the one who made the most money, it would be easy to find the right judge. If "merit" simply meant someone who had never been in a controversial item, it would be easy to find him.

But suppose merit means ideology. Merit is not so easy to define. If you simply leave it to the bar association, you get very conservative judges. After all, the bar association told you that Haynsworth and Carswell were fine.

You have no easy way to choose judges. It is a hard decision, and the Attorney General is the one who largely makes it. I am suggesting that one who would have felt that Carswell was the perfect appointment does not have very good judgment.

But I did not bring up the letter primarily for that point. I brought it up primarily to show the lack of candor. I think this is not becoming in an Attorney General who must convince this country that the Justice Department is back where it was before Watergate.

Next, Judge Bell has shown a lack of sensitivity to the rights of blacks, other minorities, and women.

I do not base my opposition to Judge Bell primarily on his membership in exclusive clubs. Too many people do it. You could not form a cabinet of people who have no relationship to exclusive clubs. I cannot go eat at the Metropolitan Club, the Cosmos Club, or the University Club because all three of them in one form or another have some element of exclusion.

Exclusion is a sad and tragic way of life in this country and even in this city. So I could not in good conscience oppose Judge Bell on the ground that he had belonged to racially exclusionary clubs.

But I can and I do say that his conduct in relation to belonging to those exclusionary clubs demonstrates a tremendous lack of sensitivity to the rights of the people excluded.

To begin with, when this issue was raised, Judge Bell said that he was considering asking the clubs to let him resign temporarily or become inactive. You cannot put your conscience—as Parren Mitchell says—in a blind trust. You cannot put your conscience temporarily on ice and say that you have done something.

I thought that reaction that he try to retain his club membership was an insult to every person of the category that was excluded from those clubs.

Strangely enough, I want to make the same point that Mr. Clarence Mitchell made yesterday afternoon. Judge Bell has not said, "I have resigned." It is 3½ weeks later, and there is no suggestion that the resignation has taken place from these clubs.

I consider to continue in the public eye as a candidate for this job and still retain membership is an insult to the people who are excluded from the types of clubs to which he belongs.

But even that is not what I would say is the main problem of his lack of sensitivity. I would say it is in his failure to recuse himself in two cases where he participated where this was the very issue.

How a man who belongs to segregated clubs can sit on a bench and decide issues involving segregated clubs is beyond me.

I refer to these two cases: *Golden v. Biscayne Bay Yacht Club*, 521 Fed. 2d 344; in 1975 Judge Bell sat and joined in reversing a judgment which would have prevented the Biscayne Bay Yacht Club from keeping out a Jew and a black. It's exactly what his club was, and he joined in deciding the rights of these people without even telling them that they should have a chance to get rid of him.

Then, there is another one which he wrote. I do not know if there is much difference between agreeing and writing. There is another case just as bad: *Parrish v. Board of Commissioners of the Alabama State Bar*, 505 Fed. 2d 12 in 1974.

There some blacks sued the bar association of Alabama because they were not getting a fair shake in the grading; they said they were not getting a fair shake in the grading. The judge was a man by the name of Varner; he was president of the Montgomery County Bar Association, which had a clause barring blacks.

Naturally the plaintiffs moved to recuse Judge Varner from sitting in the case where he was determining the rights of blacks.

Judge Bell joined in getting the rehearing en banc and wrote the opinion en banc saying, without telling the people that he himself was part of one or more exclusionary clubs, and ruled that Judge Varner did not have to recuse himself because he was president of a black-exclusionary club in a black discrimination case.

I say this is insensitivity. It is insensitivity to the degree of conflict of interest. I think that is dangerous.

Mr. Bell comes from one of the most powerful firms in the South, if not the most powerful firm. I think he has demonstrated an insensitivity to the problem of conflict of interest: this raises very serious problems for the future of the Department of Justice.

The third point is really my main point.

Others have stressed the Carswell letter. Others have stressed the private clubs, although not in the same way that I have.

My main point is Mr. Bell's support of segregation as lawyer and judge.

I want to choose my words carefully because this is not an easy case to develop, and it is not one in which all the information is in. It is not one where an individual can get all the information.

Choosing those words carefully, I respectfully suggest that for 14 years—from 1958 to 1972—Griffin Bell, as lawyer and judge, gave aid and comfort to the segregationists of this country.

It could have been longer. The public record shows nothing before 1958, and I have nothing about that. The record since 1972 I am not clear on. I am trying to restrict my charge to exactly what I have been able to study. Based on that study, I think I can say that I am going to demonstrate to this committee that for at least 14 years, as lawyer

and judge, Griffin Bell gave aid and comfort to the segregationists of the Nation.

Senator Mathias this morning referred to 17 years ago as the problem.

I respectfully suggest that I want to develop here that it is not 17 years ago. It is right through into the 1970's.

There are four stages of Griffin Bell's aid and comfort to the segregationists.

I would like to mention what the four are, and then take them one at a time.

It is sort of like the seven stages of mankind, but I have four here that I want to develop.

The first stage was massive resistance. When that did not work, they went to massive recalcitrance. When that didn't work, they went to freedom of choice. When that didn't work, they went to roadblock desegregation.

I want to take those and go through them one by one, because I think that they support the point I am making on aid and comfort.

Starting in 1958, there was not a black child in a Georgia school. This was not last year that the Supreme Court had ruled. This was 4 years after the Supreme Court decision.

There was not a black child getting his benefits.

Governor Vandiver ran a campaign for Governor on massive resistance. His language is not very pretty. He said:

"There's not enough money in the Federal Treasury to force us to mix the races in the classrooms."

He said: "Through an overwhelming avalanche of our ballots, we can let the whole world know that Georgia is still safe. That here segregated schools are secure under the leadership of Ernest Vandiver as Governor for the next 4 years."

He said all during the campaign, "you and I say to the U.S. Supreme Court that we will resist this tyranny at every filling station, in every hamlet, in every militia district, in every county throughout the length and breadth of the State of Georgia until sanity is restored to the land."

He won the primary on that basis. He promised to use the National Guard and the State highway patrol to prevent integration.

Then on November 11, 1958, he sent a team of four lawyers to go to Virginia and find out how the original spokesman of massive resistance are working it.

Judge Bell was, of course, one of those four lawyers. The other one, mentioned this morning, was Charles Block. I am not aware of the other two, although that article that was mentioned referred to this morning must have had those names.

On January 12, 1959, Mr. Vandiver was inaugurated as Governor and Griffin Bell became his chief of staff. The bills were promptly enacted. Virginia was repeated in Georgia.

The bills are incredible. The bills on which Judge Bell has admitted he worked. They were passed without any suggestion of his opposition. They were bills that were passed by the leadership of Governor Vandiver, who Mr. Jaworski said this morning was so close to Judge Bell that he would not even inquire of him about Judge Bell.

The bills that were passed were five. There was an act giving the Governor the power to close schools to prevent integration. It was an act to give the Governor the power to close any unit of the University of Georgia to preserve good order.

There was an act to provide tax credits for contributions to private schools. There was an act setting an age limit of 21 for entering State colleges and 25 for State graduates and professional schools.

This, of course, is after the black, who would get there a little later in time.

Finally, there was an act establishing a commission on constitutional government, known as the State sovereignty commission.

We know the tragic history of State Sovereignty Commissions rooting out integrationists.

That is statement No. 1.

Senator MATHIAS. Again, so that the record is completely fair. Judge Bell's testimony was that the State sovereignty commission never met. It never really came into actual being, as I recall the judge's testimony.

Mr. RAUH. I accept that. I'm sorry I could not have been here for the whole testimony.

Senator MATHIAS. No doubt existed, but I want to recall what the facts were.

Mr. RAUH. Thank you.

I think you would agree that that does not negate the fact that these five laws put together were an expression of massive resistance.

No black could ever get into a white school.

Senator MATHIAS. It does not negate the fact that there was a desire to have the commission either.

Mr. RAUH. I was not even going that far. You are correct, sir.

Senator CHAFFEE. Could I just ask one question?

In connection with the election, it was just in the primary that Governor Vandiver won?

Mr. RAUH. There was an election, but it's pretty cut and dried.

Senator CHAFFEE. You read from his campaign rhetoric which is pretty strong. I was just wondering if everybody else was shouting the same line in the primary?

Mr. RAUH. That I cannot answer.

Senator CHAFFEE. I would suspect so, but I'm not sure.

Mr. RAUH. But I'm unable to answer.

I would say this. Former Governor Ellis Arnall did say that the schools should be kept open, even if integration were ordered.

Vandiver attacked Arnall, saying "that was an invitation to the NAACP to file integration suits."

In other words, I would not want to leave the impression that at that time we did not know a lot of people in Georgia who were resisting.

There was an NAACP. There were going organizations. There were efforts. There were voices the other way.

I cannot answer, Senator Chaffee, the question of primary quotes other than those that were given to me out of Vandiver's campaign.

Senator CHAFFEE. Was there an old Vandiver predecessor?

Mr. RAUH. I would have to yield to somebody else on whether there was an interim governor, sir.

So the first stage of this four-stage, 14-year history of aid to the segregationists is the participation with Vandiver in the massive resistance.

Massive resistance was a sham from the first. There never was a chance for massive resistance. Once you had a Little Rock and President Eisenhower said that troops will back the courts, massive resistance was not a possibility. Massive resistance had to be given up by the segregationists, and they did.

The way the segregationists gave up massive resistance, to what I have referred to in my four stages as massive recalcitrance, was through the General Assembly Committee on Schools, otherwise known as the Sibley Commission.

It was set up by the general assembly, and it made its report on April 28, 1960.

It dropped massive resistance, as it had to. Massive resistance had been shown unworkable at Little Rock.

Right now I take it that Judge Bell has claimed some credit for the Sibley report, and that this committee has been lead to believe that the Sibley report was some improvement.

I respectfully suggest to the committee that the Sibley report recommended illegal acts to save segregation in Georgia.

If the Sibley report is not a part of the record yet, Mr. Chairman, I would like to offer it at this time. I will refer to some parts of it.

Senator BAYH. It is on the record.

Mr. RAUH. Excuse me. I will not go further. Thank you.

On page 15 of the Sibley report—or it's page 15 of the copy I have—the real purpose of that report is stated:

We must find a position which will secure the maximum segregation possible within the law.

The Sibley report was not a report that was trying to move. The Sibley report was trying to find a legal position where you could hold onto the "maximum segregation possible."

Senator BAYH. Mr. Rauh, I do not want to put words in your mouth but I understood you to say that "the Sibley report recommended illegal acts."

Mr. RAUH. I am going to come to that.

Senator BAYH. What you just quoted from page 15 might not be the kind of aggressive, affirmative action we would like to see, but that certainly is not illegal.

Mr. RAUH. That is correct. You are absolutely correct that I may not have made my position clear.

What I am saying is this. The purpose of the Sibley report as stated by the Sibley report was "to find an alternative which will secure the maximum segregation possible within the law."

They went on to make proposals that were clearly illegal as I will get to.

This is the way the Sibley report describes the Supreme Court's decision, now 6 years old:

We consider this decision utterly unsound on the facts, contrary to the clear intent of the 14th Amendment, a usurpation of legislative function through judicial process, and an invasion of the reserved rights of the States. We consider, further, that putting aside the question of segregation, this decision presents a

clear and present danger to our constitutional system because it places what the court calls "modern authority," in sociology and psychology above the ancient authority of the law and because it places the transitory views of the Supreme Court above the legislative power of Congress, the settled construction of the Constitution, and the reserve to sovereignty of the several States.

Senator BAYH. It is now 12:30. We will have to recess now for the Democratic Conference and we will try to be back by 1:30. Everybody is so advised.

[Whereupon, at 12:30 p.m., a recess was taken.]

AFTERNOON SESSION

Senator BAYH [acting chairman]. May we come to order, please?

Mr. Rauh, please continue.

I think I should offer a word of apology for some of my colleagues who are still in the conference right now. I slipped away so that we would not inconvenience you and the other witnesses any more than was necessary.

Mr. RAUH. Thank you, Mr. Chairman.

Before the recess I was going through the points that I was making in support of the proposition that for 14 years at least, as lawyer and judge, Griffin Bell gave aid and comfort to the segregationists.

I had said that there were four stages of his aid and comfort to the segregationists.

The first one, I had said, was the massive resistance where there is no record of his ever disagreeing anywhere at any time with the Governor's massive resistance program.

What happened then was that massive resistance did not work. It was inherent in it that it could not work. In fact, I said it was Little Rock that settled that point. I should have said it was the Civil War because really once the Civil War said that no State could separately determine its status and laws it was clear that massive resistance was dead.

The turn from massive resistance to the second stage, massive recalcitrance, was not a turn for moderation, as has been suggested. It was not a turn for decency, as has been suggested. It was not a turn to keep the schools open, as has been suggested. It was a simple retreat to the next stage in segregation, a stage they thought would win.

Just prior to the recess, I had brought up the Sibley report, which is part of the record, and pointed out that what they said their purpose was, was to secure the maximum segregation possible within the law. I should now point out that this report on April 28, 1960, made recommendations that were not within the law as it was on April 28, 1960. I am not talking about the law as it is today, the 13th of January 1977. I am going to show you how it was illegal under the law as it was on April 28, 1960.

On page 17 of the report are the recommendations. The first recommendation is that the general assembly propose to the people of Georgia an amendment to the Constitution reading substantially as follows:

Notwithstanding any other provision in this Constitution, no child of this State shall be compelled against the will of his or her parent or guardian to attend the public schools with a child of the opposite race. Any child whose parent or guardian objects to his attending an integrated school shall be entitled to reas-

signment, if practical, to another public school or shall be entitled to direct tuition grant or scholarship aid as provided by this Constitution as may be authorized by the General Assembly.

What they were saying there is if a white child does not want to go to school with a black child and there is no other way to work it out, we will give him a direct tuition grant or scholarship aid.

I understand that Judge Bell suggested that the question of private schools was not decided by the Supreme Court until very recently. That is true of private schools unaided by the Government.

At the time the Sibley report was issued on April 28, 1960, the Supreme Court had already ruled that direct tuition grants or scholarship aid was illegal, ruled this twice.

Strangely enough, it ruled it in a case cited in the Sibley report at page 11. That is *Cooper v. Aaron*, 358 U.S. 1, which was decided in 1958. I quote:

State support of segregated schools through any arrangement, management, funds or property cannot be squared with the 14th amendment command that no State shall deny to any person within its jurisdiction the equal protection of the laws.

Cooper v. Aaron made 100 percent clear that the direct tuition grant or scholarship aid which the Sibley report proposed was illegal as of the moment that they proposed it.

If *Cooper v. Aaron* is not clear enough, there was another case at the same time which dealt directly with tuition grants to private schools and held they were unconstitutional.

The citation for that, Mr. Chairman, is *Aaron v. McKinley*, 173 Fed. Sup. 944, which opinion was affirmed by the U.S. Supreme Court in 361 U.S. 197, 1959.

In other words, tuition grants to children in private schools were held illegal one year before the Sibley report proposed them as a substitute for massive resistance.

Senator BAYH. May I make an observation. Feel free to correct me on it. I know you have been here for a good deal of the hearings. I have had to slip out from time to time myself.

I do not recall the nominee every saying that he was responsible for or the architect of the Sibley report.

He did say that he was a part of the effort to establish the commission.

He did say that to the extent the commission went throughout the State and talked to people in terms of having to abide by the court ruling, he thought that was salutary.

I do not ever recall him associating himself with the report, either as endorsing or being the architect of the specific points thereof.

The provisions that you relate to us are very alarming, indeed.

Do you recall the nominee ever having said that?

Mr. RAUH. It is my understanding, and this is from the press prior to the hearing, that when the nominee was subject to interrogation by the press about the Vandiver massive resistance, his answer was that the Sibley report, which he had brought into being and which he had helped get established, had given the answer to the massive resistance and had shown that there was a way of keeping the schools open.

Indeed, here he states continuously that his purpose was to keep the schools open and that they were moving in that direction.

I am trying to show you that the Sibley report was not such a document.

The nominee's exact words on the Sibley report, I do not have them in front of me.

It is my impression that in trying to slide off the onus of the Vandiver massive resistance when he was the chief of staff and legal counsel for Vandiver, he used the Sibley report as his defense.

It is on that basis that I am suggesting that the Sibley report was not a good faith operation. It was a realization that massive resistance was impossible and we will do the next best thing to massive resistance, and this is what the Sibley report is.

Senator BAYH. I am anxious to get the rest of your assessment and what was said to the press. Whether the press's interpretation of what was said is accurate, I am not prepared to say. I do think my memory is accurate in the way I described what the witness did say while he was here under oath.

Mr. RAUH. I cannot answer that. I was not in the room. I am only saying that I do not see that he can have his cake and eat it, too.

He was sliding off the massive resistance point by reference to the change in the Sibley report. Now I am saying that the Sibley report is in some ways more devastating to integration than even the original massive resistance because the massive resistance was bound to be thrown out. It was hopeless. It had not worked. This was a fallback to regroup their troops for segregation. That is what I am trying to show about the report.

I suppose the only way it can be clarified as to the position of Mr. Bell on the Sibley report would be by further examination of Mr. Bell.

Senator CHAFEE. Could I just ask one question here?

Correct me if I am wrong. As I look over these papers I have in connection with the Sibley report, even though the Sibley report does not receive your approval, there was even a dissent from that. The dissent is one of even a harder line. The vote came out 11 to 8 with the vice chairman of the commission himself dissenting, which gives us some indication of the tempo of the times in Georgia in 1960.

Mr. RAUH. I am not suggesting that the tempo of the times was not difficult in Georgia in 1960. What I am suggesting is that even the majority of the Sibley report is illegal and pro-segregationist.

It may be true that there were some people who still wanted to stick to massive resistance for political reasons after they knew it was dead, knew it could not exist. In other words, there may be variances in segregation.

I would say that a wise segregationist in Georgia on April 28, 1960, would have been for the majority opinion because the minority opinion was hopeless. The majority opinion proved to be all illegal, too, but later on.

Senator MATHIAS. Mr. Rauh, just to refresh our recollection from the morning session, what were your different steps—massive resistance, massive recalcitrance—

Mr. RAUH. Massive resistance, massive recalcitrance, freedom of choice, and roadblock.

I am now on the second one, massive recalcitrance, which is the Sibley report majority. I think the minority pretty well stands with massive resistance. It is pretty hard to find a place between massive resistance and the Sibley report.

Those were the four steps, sir.

Senator MATHIAS. Were you present yesterday when Judge Bell testified about the Sibley report?

Mr. RAUH. No.

Senator Bayh asked me about that, sir.

I was not present at that time. It is not clear to me exactly what his position is from what I have read on the Sibley report.

I did read that when questioned about his relation with Vandiver and the massive resistance measures that were taken, he said that his real purpose was to moderate it and he referred to the Sibley report, I read, as a moderation of it.

Senator MATHIAS. Again, in the interest of accuracy, Judge Bell is here and he can correct me if I am wrong, but, as I understand his testimony, it was that the concept of a commission was his idea but that Mr. Sibley was a very independent character and that he did not draft the report—well, here is the testimony:

Judge Bell: I got it up. I thought of it.

Then I said,

You were the author of the Commission but not the report?

Judge Bell: I didn't have anything to do with it after that.

Senator BAYH. At least our recollections are similar on that.

Mr. RAUH. Yes. Senator Bayh had suggested that.

I made the point that I did not see how Judge Bell could have his cake and eat it, too.

He could not cite the Sibley report as his defense to being in on the Vandiver massive resistance and at the same time disclaim anything about the Sibley report.

Furthermore, there is no public indication anywhere that Judge Bell in any way disagreed with anything in the Sibley report.

Item No. 2 of the Sibley report was the right to close schools that were integrated. It was remarkable. This would have been a great thing that they could close an integrated school but they would not have to close them all.

At least you can say for massive resistance that they could not just close the integrated schools. In massive resistance they were going to close the whole school system.

Third, the general assembly enact legislation providing for tuition grants or scholarships for the benefit of any child whose parent chooses to withdraw said child from an integrated school and for the benefit of any child whose school has been closed, whether as the result of existing or future Georgia laws or as a result of a court order.

I have already made clear that that had already been decided illegal.

I won't go on with the Sibley report. It is the second stage of the segregationist move, the first stage being massive resistance and the second being massive recalcitrance.

The third stage was freedom of choice.

When it was clear that you could not work massive resistance and you could not work the Sibley report, the segregationists went to freedom of choice.

That was kind of diabolical because it meant that the black child, if he ever was going to get an integrated education, would have to be the stranger.

You were not going to integrate. What you were going to do was take some poor black child, whose parents are courageous as some of the witnesses you have heard here in the Mitchell family, and they would take him to an all white school. The poor child would be left there to the mercies of that all white school.

As far as the white people are concerned, you can always move out of any black school. They had no difficulty with that.

What you got out of freedom of choice was token integration and cruelty to black children.

Why do I suggest that Judge Bell was involved in this? I refer to the Jefferson County case in 1967. I want to date this very clearly.

It was massive resistance in 1958 and 1959, Sibley in 1960, and Jefferson County in 1967. We are moving up to the present.

A majority of the fifth circuit — Tuttle, Wisdom, Brown, these wonderful Southern Judges—ruled that freedom of choice was illegal.

Griffin Bell, with only one other judge against—there is a separate opinion by Judge Coleman that is a little bit different; but Judge Bell made a ringing defense of freedom of choice in 1967 against the majority of the court and in terms which showed hostility to any form of workable integration.

Judge Bell's dissent is in 380 Federal Second 410.

It is quite a remarkable defense of freedom of choice.

Senator BAYH. Mr. Rauh, who joined Judge Bell and the others? You said Judge Coleman——

Mr. RAUH. Judge Gwin joined in this dissenting opinion; but the majority, including the ones I have mentioned, had outlawed freedom of choice.

Here are just one or two quotations from Judge Bell:

The mandatory assignment of students based on race is the method selected to achieve this result. This is a new and drastic doctrine.

In other words, Judge Bell, as late as 1967, is suggesting that the outlaw of freedom of choice with all its cruelty to blacks and continuation of segregation was a drastic remedy.

Then he talks about the HEW plan which had been made for Jefferson County. This is what he says of it:

It poses the question whether legally compelled integration is to be substituted for legally compelled segregation. It is unthinkable that our Constitution does not contemplate a middle ground, no compulsion one way or the other.

Judge Bell there is saying outlaw of freedom of choice is unthinkable, it is drastic and unthinkable, as late as 1967.

This is his conclusion:

It is no time for new notions of what a free society embraces. Integration is not an act in itself. A fair chance to attain personal dignity through educational opportunity is the goal. My view, however, is now lost in this court; hence, this dissent.

The word "dissent" is in full capital letters.

This is a ringing declaration for segregation against the majority of his own court and as late as 1967.

Well, freedom of choice did not work either. The Supreme Court outlawed freedom of choice, just as Judges Tuttle, Wisdom, and Brown had ruled; and had made clear what they expected the Supreme Court to do.

Senator MATHIAS. That case was decided before the Supreme Court?

Mr. RAUH. Yes; yes, Senator Mathias.

That case went to the Court of Appeals of the Fifth Circuit in 1967. I believe that the *Green* case in the Supreme Court is a year later. I know it is later.

Here the segregationists cannot use massive resistance. They cannot use what they did in the Sibley report. They cannot use freedom of choice.

There were not too many places they could go after that. It had been fairly well ruled out.

That is where I come to what I call the roadblock theory of the segregationists.

Make it as difficult for the protagonists of integrated schools as possible.

The fourth stage, the roadblock stage, comes in 1972 in two cases: *The United States of America v. Texas Education Agency*, which is known as the *Austin* case, 467 Fed. 2d 848, and *Cisneros v. Corpus Christi Independent School District*, 467 Fed. 2d 142.

Both decisions came down the same day, August 2, 1972.

Judge Bell wrote the *Austin* case. He has said that he was also the author of the remedy in the *Corpus Christi* case. This is indicated by the fact that the remedies in the two cases are pretty much identical.

I would have suspected that was true anyway, but it is not up for doubt because Judge Bell has himself indicated it.

These are two cases seeking integration—one of *Austin* and the other of *Corpus Christi*.

Judge Bell in each case made the remedy unworkable.

This is not a spokesman for the civil rights movement telling you that. This is the dissenting judges.

I would just like to read the last paragraph of each of these two cases, the last paragraphs of the dissents.

Judge Wisdom, writing of Judge Bell's opinion in the *Austin* case, went through it and criticized it in excoriating terms and finishes this way:

"I read subparagraph 3"—that is of the remedy suggested by Judge Bell—

As an invitation, an ambiguous invitation, but an invitation to school boards to seek refuge in demographic patterns with respect to all white or predominantly white schools.

The majority opinion may have value to first year law students, except for the defects I have pointed out, as an exposition of the judicial process in school desegregation cases generally. It is also an example of how a reviewing court can pass the buck, give the school board a delay, and confuse the district court on remand.

It is said that it marks the turning point for this court. It is the first backward step for a court that has labored mightily to follow faithfully the mandate of the Supreme Court and of Congress in the field of civil rights.

In the other case, the *Corpus Christi* case, this is the way Judge Goldberg, dissenting, ends his opinion:

"It is also necessary to say that the days of 'with all deliberate speed' are gone."

Remember, we are 1972 now. We are not back in 1958, 1960, or 1967. We are in 1972.

It is also necessary to say clearly that the days of "with all deliberate speed" are gone, and gone forever. The district court plan should be implemented now, for the obligation of every school district is to terminate dual school systems at once and to operate now and hereafter only unitary schools.

The majority so-called remedy in this case is not an abdication of our past efforts. It is a regression.

Equal protection of the law means equal protection, not equivocal protection.

This does not come from us, these statements. It comes from southern judges who wanted to see integration.

What we have, members of the committee, is Judge Bell lining up with the segregationists, which I refer to as giving them aid and comfort, through every stage of this retreat of the segregationists—massive resistance, massive recalcitrance, freedom of choice, road-block.

I respectfully submit that anyone reading the *Austin* and *Corpus Christi* cases in 1972 will certainly feel, as I do, that this was the last gasp for the segregationists and Judge Bell was the spokesman for their position.

Senator CHAFEE. What happened on those *Austin* and *Corpus Christi* cases?

Mr. RAUH. They were sent back to the district court.

Senator CHAFEE. They were not appealed?

Mr. RAUH. To the Supreme Court?

Senator CHAFEE. Yes.

Mr. RAUH. I am not certain, Senator Chafee. I would have to check that for you, sir; but I can do that, if you want.

Senator CHAFEE. I guess my real point is that that became the law.

Mr. RAUH. That became the temporary law in the fifth circuit. Yes, it would have been the temporary law in the fifth circuit until reviewed by the Supreme Court.

I am not clear on the Supreme Court review. I have not had a chance to do that.

This is kind of a rushed legal job you get to do here. I wonder if you have any idea of the amount of effort in understanding one of these. They are so complicated. It was a real job to get ready for this today.

Senator CHAFEE. It is a real job reading the exhibits everybody is submitting, too.

Mr. RAUH. Right.

I would like to make just a very few additional points; then I will be through.

I have spent a good deal of my life defending free speech. In fact, I think I was a civil liberties lawyer before I was a civil rights lawyer.

I have never read an opinion as weakening of the first amendment that occurred during my lifetime, my active life, than the expulsion of Julian Bond from the Georgia Legislature.

Oh, I guess there were worse cases during World War I, maybe, or back in 1798 where you had the alien and sedition laws and so forth; but this is the worse contemporary one.

Senator BAYH. The Judge has admitted his mistake.

Mr. RAUH. I was going to come to that because I think that is an important point. I won't go into the case.

The Attorney General of the United States must be able to resist the passions of the moment.

It is not that Judge Bell now knows that he was wrong. There was a kind of anti-Julian Bond hysteria at that time. That was back in 1966—the war was still in favor in this country and the dissent was less than it became as time went on.

I guess it was in early 1966 that the court of appeals had that before them.

What scares me is that a person who could yield to that kind of hysteria and rule out Julian Bond's right to sit in the legislature could also yield to a hysteria as Attorney General.

The McCarthy period was an example. If we had had a strong Attorney General in the early 1950's in either the Truman or Eisenhower administration—I condemn them both with bipartisanship—if either one had had an Attorney General, you might have avoided some of the worst of McCarthyism.

But what we had was that four Attorneys General on both sides yielded to McCarthyism, and the lives that were rent asunder are well known.

I cite that really not so much that it was wrong, because as Senator Bayh correctly points out that has been admitted, but for the yielding to the passions of the moment.

I feel called upon to say a word about Mr. Jaworski's testimony this morning.

I yield to no man in my respect for what Mr. Jaworski did to bring this country back from the abyss it was in at the time he took over; but I do not think that makes him an expert on civil rights.

I would respectfully like to discuss the two points he made in favor of Judge Bell.

One is the Barnett case. In the first place, Judge Bell did not do anything in the Barnett case, or in the *Meredith* case, if you want to designate it that way, except deal with the procedural rules.

Mr. Jaworski forgot to tell you something. He forgot to tell you that when the issue was whether Ross Barnett was guilty or not, there was a four-to-three vote in which Judge Bell voted to let Barnett off, and thereby somewhat lessened the nature of the crime and the pressure that it should never happen again.

If you will look at *United States v. Barnett*, 336 Fed. 2d 99, Judges Reeves, Jones, Gewin, and Bell let Barnett off. There are separate dissents by Judges Tuttle, Brown, and Wisdom complaining that Ross Barnett's performance in defying the law-of-the-land was not such as he should have been allowed to go scott free.

Far from the *Meredith* case being a reflection of Judge Bell's pro-civil rights position, it was obviously the opposite.

Furthermore, with commendable candor, Mr. Jaworski announced that he had no other cases he was citing in that regard.

The second point I would like to make is the letter which he wrote at that time. I think it tells more of Mr. Jaworski than of Mr. Bell. There is not one sentence in there about civil rights, not one sentence about whether Mr. Bell would be pro or con the rights of blacks in the fifth circuit, where the most blacks reside.

Then he stated—and this, I must say, I find sad—that the two people he named, that he consulted, were Smythe Gambrell and Charles Block, who we in the civil rights movement have referred to over the years not only as our opponents, but as the general counsels of segregation in the South. Those were the two, plus Judge Tuttle, that he referred to as he had dealt with.

He said there were others, but those were the two he named. Two leading, legal lights for segregation were the ones that he thought should be the ones to tell him about Judge Bell.

As far as the reference to Judge Tuttle is concerned, I consider that unfair. Judge Tuttle is not in a position, I suppose, to say how he feels about those matters.

Some of the civil rights people have gone to Judge Tuttle and he has indicated he does not want to become involved.

I think it is unfair to utilize the conversation he had because Judge Tuttle does not feel he can get in. I am, therefore, not going to utilize the conversation that the people in the civil rights movement have had with him and with Judge Wisdom.

I do say that it seems to me that Mr. Jaworski's testimony, instead of helping Judge Bell, really supports our case.

In the first place, in *Barnett*, Bell was the key vote—the difference between Barnett being convicted or not, and he voted for Barnett.

In the other matter of the letter, the letter is the letter recommended by the segregationists of Georgia, Charles Block and Smythe Gambrell.

There has been some suggestion that we do not have witnesses on our side of the wrongdoings that have been asserted.

I have talked to Clarence Mitchell about this. We have discussed why this is.

I would just like to add this: We were told we had to ask as of last Friday to testify. It was very hard for both of us because we have organizations. We cannot just say, "I want to testify." This is an organizational matter.

Our board meeting or executive committee meeting of the ADA met on Friday and we sent our letter up Friday afternoon.

Clarence sent his letter up on either Thursday or Friday, I am not sure, in the knowledge from his organization, from the leaders, that they would take that position.

Senator MATHIAS. Mr. Rauh, who told you that you had to have a notice in that you were going to testify by Friday?

Mr. RAUH. I am glad you asked that question because I recognize a terrible thing I have done. I have not introduced Miss Vicki Otten, the legislative representative of the ADA. You have saved me a terrible embarrassment.

Now I have to ask her because the statement was made to Miss Otten.

Miss Otten says she called the clerk of the committee who told her they would have to have it in by Friday and they would have to have an outline in by Friday.

That was what we were told, sir.

Senator MATHIAS. I can only speak for myself. The committee did not have any meeting at which any such deadline was imposed. It may have been an administrative rule of convenience.

I do not think that most members of the committee would want to impose any kind of embargo on relevant and useful testimony.

Mr. RAUH. Well, we are always a little careful. When we were told we had to be in by Friday, we met the necessary requirement, difficult as it was.

It may be that you have some rule about a period before you are going to testify.

Senator MATHIAS. I think there is a general rule, but then this whole proceeding is a rather informal proceeding.

Mr. RAUH. That is what we argued, but we were told to be in by Friday.

The point I am making is that Mr. Mitchell and I did have a great deal of difficulty but we met the deadline. Now, having testified, we can turn our attention to trying to get other witnesses.

I do not want to put this in the line of a formal request. I am just saying that both Mr. Mitchell and I feel that if we were given more time, we would try to find the money to transport people who are the real victims of these things like the Jefferson County, the Corpus Christi and Austin matters.

In other words, if the committee in its wisdom decides to keep the record open for further witnesses, we believe that this will be easily obtained and it will be simply a question of our trying to raise the funds. I think we can do that.

Anyway, I just wanted you to know that we think we can have witnesses with much more relevant evidence than you are going to hear from the pro-Bell people.

Remember something here. This room is full of people who are part of the transition team. They have every right to be here. That is their job. But they have the capacity for bringing witnesses that we do not have. They have an administrative operation going. That is their job, and God bless them for doing a good job. We just need a little time.

You are going to find that the Lonnie King's and the A. J. Cooper's are not speaking for the people down there. We need a little time for this.

I just thought that I would raise it without making a formal request that you have to rule on. I am not doing that.

If the committee in one of its meetings would like more witnesses, would like to hear—instead of hearing it second hand from Clarence Mitchell and Joe Rauh—would like to hear from the people who suffered from this, we are in a position to provide them.

Senator BAYL. Let me make an effort, at least, as the temporary chairman to speak for the chairman, or rather than do that, to try to remember what past committee precedent has been where, in order to expedite hearings and to try to get them moving, not to try to railroad them or not be thorough, certain efforts have been made to try to get evidence in in advance, so that we could move forward.

On several occasions, on issues on which you and I have found ourselves comrades in arms in opposition to nominees, as you will recall, there have been requests made even after the hearings have been closed in which relevant material, relevant witnesses presented themselves and they were heard.

Now, I say to you, Mr. Rauh—Joe, my friend—having had the chance to be allies with you and my friend Clarence and your organizations, it is difficult for me now—and I have not prejudged this—but it is difficult for me now, knowing how effective your two organizations can be, to sit silent and have you say, sir, that only you and he are in a position to bring witnesses or to search out witnesses.

You have a very sophisticated and thorough organization, and I salute you for it, at the local level. If there are witnesses out there, I would think that they would be sitting in this room. I mean I would hope they would because I want to get all of the facts out.

I do not want to make a Supreme Court case out of this, but let's not poor mouth too much because I have seen the very effective capacity you have to bring people here who have been aggrieved in the past. I would assume that that capacity has not been lessened.

MR. RAUH. It is pretty close to a Supreme Court case when you come right down to it.

I do think we had a lot of success bringing people. I will say that at that time, sir, that your cooperation, the cooperation of a Senator who had pretty well made up his mind the way he was going to go, was a very useful thing.

Coming down to this, we will still try—I will only say for myself that I spent all of my time preparing this testimony because I decided a few nights ago, reading the paper, that no one had seen the totality of this resistance or this sticking with segregation as long as possible and that I could be of more use by reading the cases to support that proposition than I could in other ways.

I think Clarence felt the same way about his testimony.

There are other people. Of course, there are other organizations. But I think we have generally carried the load.

I do not know whether you are ruling or whether we can go on to something else and then we can decide later on—

Senator BAYH. I think the only authority I have here is as one Member of the Senate. The full committee is not here. As one Member of the Senate, I suggest to you that before the matter is terminated, and I for one, will be more than willing to consider the relevance of other witnesses who might bring information to the committee that has not been made available prior.

MR. RAUH. I think that is very fair, sir.

Senator RIEGLE. Excuse me. Would the chairman yield at that point?

Senator BAYH. Yes.

Senator RIEGLE. I think is this not the first time where a transition team has had public moneys appropriated to it to effect the transition? Are we not now, this year, operating under new rules where there is a fairly ample Federal Treasury appropriation?

Senator MATHIAS. I think there has been some money for that purpose in the past, maybe not as much.

Senator RIEGLE. Perhaps there has, but if I am not mistaken, I think there is something like \$2 million or some figure to allow that to happen.

I do not think that it gives an incoming administration an opportunity to marshal its resources and present its case in quite a different fashion than witnesses of the sort that have come forward in this case to want to express a counter opinion.

It seems to me that especially with respect to people of minority background or others in the South who may have been directly involved on the other side of these issues years ago, they, generally speaking, might be least organized and least able to get here on time and in a circumstance where they could make a presentation at all comparable to what we are seeing on the other side of the issue.

That is not to prejudge it at all; but I do think that we are talking about a rather substantial burden of effort on the part of others who might want to come forward and present counter testimony. I just think it important that that difference be noted.

Mr. RAUH. Clarence Mitchell asked me if I would put in the record at this time a letter he received this morning from Neal F. Adams, Sr., Dade County Commissioner, Florida.

There are a number of points in it. The point that Mr. Mitchell thought ought to go in at this point was in support of what I have said about the failure of Judge Bell to recuse himself in these various cases that involve the exclusionary rules of private clubs.

It refers to the fact that Chief Judge Brown did recuse himself on that very point.

May I offer this on behalf of Mr. Mitchell?

Senator BAYH. Please. Put it in the record.

[The material referred to follows.]

BOARD OF COUNTY COMMISSIONERS,
METROPOLITAN DADE COUNTY-FLORIDA,
Miami, Fla., January 7, 1977.

Mr. CLARENCE MITCHELL,
Director, Washington Bureau, N.A.A.C.P.,
Washington, D.C.

MY DEAR MR. MITCHELL: Please be advised that in accordance with the widely circulated information pertaining to the scrutiny of Griffin Bell to the post of Attorney General of the United States, please note the attached information which is documented and self-explanatory.

Education is one point of view, but to be able to distinguish the truth and basic facts in a matter is the key to unlock the door that represents superior leadership in government. My interest is not geared toward hitching my star to the wagon driven by the news media, but rather the concern of the lives of individuals that will be touched by this leadership. I am trusting that you will stand tall on raising the curtain of truth.

I wish for you and yours a very prosperous New Year. I have the honor to be
Cordially yours,

NEAL F. ADAMS, Sr.
Dade County Commissioner.

Attachments.

STATEMENT BY COMMISSIONER NEAL F. ADAMS, SR.

In response to the Miami News article, dated December 31st entitled: "Carter Asks For Public's Help to Avoid Presidential Isolation," I am hereby responding with regards to the concern that is prominent in my mind. On numerous occasions in the course of human relations, events fall in place so naturally, that many of us marvel at the absolute Power or design behind it all. This kind of realistic existence is a way of life, it would appear and was ordained to be so by the Great Architect of the Universe, and did exist until the competitive influences all around us became evident.

A brilliant example of this is that 18 percent of the population in Dade County are Black. For the last half century, this percentage remained practically invariable until a decade ago, when an enormous inflow of expatriated Cubans arrived on this soil to establish residence in the Sunshine State. Their permanency is evidenced by their naturalization and numerous undertakings of which they are a part. It is a beautiful thing to observe the Cuban people pledging allegiance to the American flag, dismantling the desire to return to their native

land. They have applied themselves on all levels. In observing both the Blacks and the Cubans in their continual struggle for survival, the knowledge and practice of entrepreneurship that the Cubans brought with them, and the innate creative gifts that Blacks are endowed with that had to be suppressed for a long number of years by leaders who were insensitive, it would appear that the tranquility of this nation's progress would face sudden death if leaders were chosen without meticulous scrutiny, hence my opposition to Griffin Bell. Deviation from the established norms instituted by our founding fathers and the recent martyrs who fought diligently for the cause of Civil Rights demonstrating the importance of recognizing human beings for what they really are and the acceptance as total beings, I am opposed to the appointment of any individual that will not support complete total equality and identical treatment.

My contention is that President Elect Carter's Cabinet should design its leadership from a fabric that is superior in quality and unmatched in performance representing all the people. Blemished material could easily premeditate deception, prejudice on various levels, subjugation and other discriminatory practices.

From a standpoint of my own personal sufferings and persecutions involving discriminatory practices, I am thoroughly aware of the effort and persistent determination that is vital to excel beyond the boundaries of the System. The long struggle for complete recognition will be destroyed if we fail to examine closely all the ramifications that are contained in the thorough search of an individual's background. I believe political implications and development in decision-making should be balanced so as to benefit every American citizen including minority levels.

The words inscribed on the Lincoln Memorial read: "Fourscore and seven years ago, our fathers set forth on this continent a new nation, conceived in liberty, and dedicated to the proposition that all men are created equal."

Because of my belief in mankind, the many grievances suffered by those who are less fortunate than myself, I am unable to support the appointment of Griffin Bell. The kind of office this man is about to fulfill should be oriented on leadership that represents the mainstream of America's refining pot. My reasons are as follows:

GRIFFIN BELL

Was nominated by President Elect Jimmy Carter for the post of United States Attorney General.

United States Appeals Court reported, that on April 15, 1976, Judge Bell voted against Jews and Blacks using public property by so-called "private clubs." Bell admits \$10,000 investment in these clubs January 3, 1977.

Chief Judge Brown of same Court excused himself because he had \$30,000.00 investment in case—December 16, 1976 news article.

Bell under Title 28, United States Code violated #453 and #455(a) (b)1, (b)4.

Bell resigns clubs to short circuit criticism December 23, 1976.

Florida Supreme Court Judge David McCain resigned to avoid impeachment and is now up for disbarment trial.

In replying to President Elect Carter's call for public help, our recommendation is impeachment or disbarment.

Senator BAYH. Let me at least reiterate my own personal position on this. I see the gentleman from Maryland has received a wire from a gentleman by the name of State Senator Julian Bond.

Senator MATTHIAS. I believe the chairman of the committee has one of those.

Senator BAYH. He is prepared to be here tomorrow.

I think that after we have had the hearings this week the committee will meet. I speak without having conversed with the chairman, but our general procedure is to meet and try to decide on this.

We are operating in a rather informal manner. This is not contrary to precedent, as Clarence Mitchell pointed out, and his memory goes back further than mine. It is different than normal circumstances.

I would think that at that time if there were other witnesses who seemed to be in a position to make a unique contribution to give us information that had not been made available to the committee, we

would have no alternative but to hear them. At least, that would be my position on this.

One of the questions I want to ask, since you have raised it, and the question of transition money has been brought in by the Senator from Michigan, I would like to and will ask the other witnesses who are here supporting Judge Bell whether they came on their own tab or whether the transition team paid their way up here. I think that is a relevant question.

Mr. RAUH. I want to make clear that I was not criticizing the transition teams for building their case. They are lawyers. They are building their case the way they ought to build it.

All I was pointing out was that there is a little difficulty on our side and we are doing the best we can. They have some advantages, but I am not in any way resentful of those advantages.

Thank you very much for receiving the document from Mr. Mitchell. That concludes my testimony.

I just want to thank the committee for giving me the opportunity to develop the legal points the way you have.

Senator BAYH. We have asked questions. I am sure there will be others.

I have been free with interrupting. I hope you will forgive me for doing that, but I am familiar with your capacity extemporaneously to deal with matters.

As I recall, in the early stages of your testimony you said you felt very strongly about the negative record of Judge Bell in the areas of desegregation up to 1972.

Here we are 4, moving on 5, years later.

Can you give the committee some reason for not having the same kind of carefully documented facts to support your position in the past 4 years?

Mr. RAUH. I dealt only with the school desegregation matter there. I simply have not gone beyond the 1972 cases. That is as far as I have been able to go yet.

I will do this, Senator Bayh: If there is a subsequent case, either way, on school desegregation, I will submit it along with a comment.

In other words, I will do what I have not had time to do, which is the past 4 years.

I would like to say, not on school desegregation, but on the other point, that I think the *Biscayne Bay* case is 1975, I believe.

Senator BAYH. That is a 1975 case? I thank you.

Mr. RAUH. I believe so.

On the school segregation, I will now do what I have not had a chance to do before. If there is anything that is relevant, either way, it will be submitted.

Senator BAYH. I would appreciate that. I know the rest of the committee would.

Plus, you know, there are other areas where one's judgment in civil rights can be tested—voting rights, equal employment opportunities, and this whole case which the Court decided rather strangely the other day as far as zoning and housing is concerned.

I do not know if you were in the room, but the judge, in response to a question by one of the other Senators, was very unequivocal in his determination to move in this particular area.

If you have other information that you would like to submit in this area, I know the committee would like to have it.

Let me ask you to educate at least this one Member of the Senate on this Meredith-Barnett issue.

Now the 4 to 3 decision that you referred to, was that not the remedy part of a case which also involved an affirmative action as far as what should be done with Meredith's request to be admitted to the University? Was that the only part of that Meredith case? My mind is foggy on that. Was that not the remedy or the penalty part of a case?

Mr. RAUH. Yes. What I was able to get at the lunch hour was the remedy part.

After he had been cited for contempt, he was let off.

Senator BAYH. All right, but I think to get the record out here on top of the table where you would want it to be, and I can see why you would point this out, this was really the penalty part of a case. The remedy part ordered Mr. Meredith to be admitted to the university.

Is that not accurate?

Mr. RAUH. That is a continuation of the case which ordered Mr. Meredith be admitted to the university.

Senator BAYH. Where was Judge Bell on the question of what should be done as far as whether Mr. Meredith should be admitted to the university or not?

Mr. RAUH. All I learned on that was what Mr. Jaworski said this morning. It seemed to me that there was nothing in there other than the fact that he was chosen to do the procedure.

Meredith had to get into the university. Once you had Little Rock—indeed, as I said earlier, once you had your civil war—the Federal law runs to the State.

Barnett prevented it, whether you use "contempt" or——

Senator BAYH. They tried to prevent it, did they not? Governor Barnett himself tried to prevent it?

I should know. I apologize to you and the committee. I should know the answer to that question.

But it seems to me of equal importance to what you are going to do with Governor Barnett is what Judge Bell's position was in the critical issue of whether you are going to let black students into the University of Alabama.

I do not know the answer to that question. I am going to find out.

Mr. RAUH. What brought it up was Mr. Jaworski's testimony.

The only thing I had time at noon to find was the fact—you were saying all this wonderful stuff about all of the procedures. The fact is that all of the procedures ended up in letting Barnett off, with his deciding vote on letting Barnett off.

Senator BAYH. Also, somehow or other, whether Judge Bell had anything to do with it, as I recall, it ended up with Mr. Meredith being admitted to the university.

Mr. RAUH. Yes; through the troops and the National Guard and a night when there was a real fear that the National Guard and the troops were going to get overwhelmed by the crowd.

He did not get there on the basis of the handling of *Barnett*. He got there because the President of the United States and the Attorney

General were determined that the law of the land was going to be carried out.

Senator BAYH. What I would like to know is: Was part of that law of the land a fifth circuit-Supreme Court decision that said Mr. Meredith should be admitted? If that was the case, then I would like to know—

Mr. RAUH. I will submit the whole history.

Senator BAYH. I will do some digging myself.

I just thought with your great command of that history that you might have that on the tip of your tongue.

I apologize.

Mr. RAUH. I did not remember exactly. The first recollection was through the Jaworski testimony. Then we did find this one thing which I felt was relevant.

Senator BAYH. I appreciate that.

Senator Mathias?

Senator MATHIAS. Mr. Rauh, I think you have obviously done a yeoman job of researching the judicial record. It is a tough job.

I think the committee would be very grateful to you for what you have done.

The record, as you have researched it—you referred to the time limits that constrain you—has been the record with regard to civil rights.

The duties of the Attorney General in the field of civil rights are very great and very serious, but there are other responsibilities in the Justice Department.

The area of antitrust is of enormous concern to the consumers of the country as well as to the economic community.

There is control of the Federal Bureau of Investigation, which has proven to be uncontrolled on a good many occasions in our recent history.

There is the Attorney General's participation in national security decisions of various kinds, problems that relate to domestic tranquility.

I am wondering how in these other areas, if you can—and I know you are an executive man and that you can set one subject aside and look at another objectively—how you would assess this nomination from these other perspectives.

Mr. RAUH. I am not qualified, Senator Mathias, because I have not made the study to be qualified.

Senator MATHIAS. You are going to make us do the work on that.

Mr. RAUH. There are other people who work in other fields. For example, I suppose the ecological groups have studied theirs. I suppose the women have studied theirs.

Although I have some familiarity with that, with antitrust I have no real familiarity.

I suppose if you took a list of the clients of King and Spalding, you would probably find most of them are engaged in antitrust on the other side from the U.S. Attorney General.

Senator MATHIAS. Sometimes that is a good place to learn.

Mr. RAUH. I agree.

I make no point of that. All I am saying is that it is not a subject which I feel is determinative—I guess it is the way Mr. Mitchell would

answer if he were here. I think maybe it is the way be answered yesterday.

There may be a lot of things in the Department of Justice but the one thing that is disqualifying to us is softness on civil rights. That is the one thing that a man ought not be to go in there—the Justice Department means too much to the minorities in this country.

It has been the hope of the minorities through much of our lifetime, and I would say without trying to overstate it, without saying it is the No. 1 thing in the Department, without even saying that, I would say one thing that is disqualifying is the absence of an all-out desire to enforce civil rights.

Senator MATHIAS. Mr. Rauh, you have been a lawyer for a few years.

Mr. RAUH. I am 66.

Senator MATHIAS. You are considered one of the leaders of the bar here in Washington.

I believe, I do not know of my own knowledge, but I believe you are a member of the Democratic party.

Mr. RAUH. Yes, sir.

Senator MATHIAS. Were you consulted on possible choices for the Office of Attorney General when the search was underway?

Mr. RAUH. No. I would be only less than fair to the transition people if I did not say that I have been consulted on issues that they were considering. They have been very nice in asking about our views on a number of issues in the civil rights area where they were doing position papers, but not on any personnel. I would not have expected it.

Senator MATHIAS. If you had been, could you have suggested some names that you might have enthusiastically endorsed?

Mr. RAUH. I put some names in the press release that we issued on Sunday of our position, sir, and they were taken out.

When you give some names, you get a lot more people sore at you by not including them than you do by giving them.

Let me simply say that I think that there are a great many people of tremendous distinction who have the confidence of the minority community that could have been chosen.

I have a belief that there are a lot of wonderful lawyers in this country. As a matter of fact, the lawyers are getting better. The younger ones are much more interested in public interest laws than my generation.

I have criticized my profession often of being too conservative, but let me say it has hundreds of people who would make good Attorneys General.

Senator MATHIAS. I find a certain paradox in what you have just told the committee.

This is the first time that I ever knew that the ADA was following the precepts of Louis XIV. Louis XIV was quoted as having observed that whenever he bestowed some object of grace or favor upon a subject, he made 99 enemies and 1 ingrate.

Mr. RAUH. Louis XIV wasn't so bad, I guess, if he agrees with us. [Laughter.]

Senator MATHIAS. I suspect the area of agreement is rather small. Thank you, Mr. Chairman.

Senator RIEGLE. Thank you, Mr. Chairman.

When you were kind enough, Mr. Chairman, to allow me to interject before on the transition thing—I do not want to leave standing the inference that the witnesses that have come in support of Mr. Bell's nomination have necessarily come because they were recruited or had their plane fares paid, or what have you.

Mr. Jaworski made it quite clear that he came on his own initiative. I understand that other witnesses in the room that will later appear have also come at their own initiative.

My point was a different one. That is, if you are organizing an effort to put over a nomination and that is, in part, assisted by public money, that facilitates getting it done; whereas if those who are out there who want to speak against it are not given the same chance at organization and help and what have you, it is a much more difficult job.

In any event, I appreciate your testimony and I appreciate the work that you have done.

I think the legal research is an important contribution and one that I value and that I think the committee will value.

One of the things that occurs to me as I listen to you and listen to other witnesses—and I think it is so hard for anybody who has not been overtly discriminated against really to understand—is that when you are struggling to get a full measure of what is supposed to be yours anyway, the notion of settling for less or having to fight to get it and having to overcome others who stand in your way or in one way or another try to see to it that you don't get a full measure, that perspective, I think, is something that you can really only understand if you have lived inside that role. Many of us have not.

It seems to me that if the charge can be made and documented that this nominee, or for that matter any nominee, has been a party to withholding, denying, or a subtraction of rights, to a delay of a redress of a grievance where rights were to be made full or restored—any part of that process, to me, borders on a criminal act.

In other words, if you have ever, it seems to me, been a party to a process where you have in some deliberate fashion helped deny somebody else a full measure of what they ought to be accorded under the law, that is a breach of the law. Whether you have done it in an advisory capacity or whether you have done it as an operating executive or as one who counsels an operating executive, is quite incidental.

I think the important thing is the effect.

The thing that really causes the outrage in me is to think that we are still struggling so that people get a full measure. I mean, the notion that there should have to be a process through which one goes and a fight through which ones goes just to get a full measure just isn't right.

I do not think we can afford to have there be any question, especially when we are talking about this particular job assignment. It has to be someone who not only would not be a part to a denial of a full share, but it has to be someone with a passionate advocacy for a full share.

It seems to me that I do not know if anyone's record is completely unblemished in one form or another, but it seems to me in this area the tolerance for blemish has to be very, very small, especially so given this time.

The hopes have been raised in so many people that perhaps now finally we are going to see to it that full shares are achieved.

It seems to me any history of an involvement in something less than that, unless it can be very clearly resolved in favor of the nominee, becomes a very material fact.

We have been circling this and circling this in the testimony.

It is a very hard, particularly in terms of the period of time that Judge Bell worked with Governor Vandiver.

His explanation, from his vantage point, is quite a plausible one.

I do not know whether you were herewhen he spoke in terms of how he felt that he was a force of moderation, pulling an opinion that was quite a negative one in the other direction.

That is why I think it would be awfully important if there are others who were there at the time who can bring to bear a contrary view and who have enough insight and legitimacy as a witness to do so, they ought to be heard from.

Clearly, to me, that is a central issue in this judgment that we have to try to reach.

I appreciate the contribution you have made along those lines.

Mr. RAUH. I appreciate the statement that you just made.

I find the difficulty with Judge Bell's statement was his suggestion that he was a force for moderation. What was the moderation? The moderation was the shift from massive resistance to Sibley.

If he wants to take the bow for Sibley, what was the moderation that happened in Georgia before he went on the bench? What was the moderation he was speaking for?

The only moderation, if you want to call it that—and I do not call it that. I call it simply giving up on massive resistance when it did not work and taking Sibley. What did he moderate? What was he moderating? The only thing that he ever referred was Sibley. I think I have demonstrated before this body that the Sibley report was an illegal segregationist document.

I cannot see this moderation in any way, shape or form.

Where was the moderation? If it was not in Sibley, where was it?

This was Georgia before he went on the bench—massive resistance and massive recalcitrance through the Sibley report.

Senator RIEGLE. I appreciate your testimony and the time you have taken to prepare it.

Mr. RAUH. Thank you.

Senator RIEGLE. That is all for me, Mr. Chairman.

Senator BAYH. Senator Chafee?

Senator CHAFEE. Mr. Rauh, it is a great pleasure to meet you personally since I have heard a great deal about you over the years.

Let me just ask: In your testimony you said something that surprised me a little bit. If I got it correctly, it was an indication that you were not quite sure that you would testify; but since your firmly associated allies, the NAACP, were going to testify, then you thought you might as well testify.

Am I casting a wrong interpretation on that?

Once you came, you came full board. You came full steam. There is no question about that.

Mr. RAUH. It is not wholly wrong, sir.

I guess I put it this way: A political organization doesn't lightly seek to oppose the candidate which it supported in the election even before he is sworn in.

We were in this funny position. We had supported Governor Carter in the election. He won. Here he is not even sworn in and we were faced with making an opposition to one of his nominees.

What we decided was—and this was pretty much unanimous—I think it was the feeling of the organization very strongly that we wanted to oppose this, that we were morally obligated, if we felt the way we did about his segregationist record, to oppose him.

You have a political problem. Do you want to be out there as the only opposition?

There is even a further problem, to be very candid with you: Would it be well for the only real opposition to be a white organization when you are arguing that the blacks have been mistreated?

So we had a concern before the NAACP and the Black Caucus action. We had a concern of being there alone.

I will be very candid with you. I had the concern of being here alone without the blacks having the same position. I am not saying what would have happened because we were not faced with that problem. We simply left that problem on the back burner.

What would we have done if the biggest organization, the strongest organization, the most respected organization for the black movement, had not come forward? Since it came forward about the same time, there was no serious problem. I have a hunch I would have been here anyway, but I cannot tell you that for sure because we did not make that decision.

Senator CHAFFEE. The second question is: Judge Bell made the point when he was testifying, and perhaps you heard this, that his duty as chief of staff was as a lawyer. He was not an integral part of the chain of command within the State house or the capitol or the Governor's mansion.

He was a lawyer who had been a personal lawyer, as I understand it, for Governor Vandiver before and was hired to prepare such legislation or to give him such assistance as the Governor requested.

In other words, he was for hire. His client had hired him; thus, he was working on a job.

Certainly we all know as lawyers that one can take on jobs without necessarily espousing the views of one's clients. You are there to give the best representation you can.

What is your answer to that—Judge Bell's statements in this connection?

Mr. RAUH. Well, I have a number, sir.

First, I do not believe that a lawyer should represent his client to the point of denying constitutional rights.

In the second place, I do not believe that there is any record of disagreement here in any way, shape, or form.

In the third place, there is a simple thing you can do when you think something is wrong. You can stop.

If Griffin Bell had felt that those five laws he apparently worked on, and he admitted he worked on a couple of them, were wrong, there was a simple thing to do—walk out the door.

I would be cheering for Griffin Bell if he had walked out that door.

Senator CHAFFEE. I would suspect that you must be, that you were and always have been, I suspect, probably a strong admirer of Presi-

dent Kennedy and Bob Kennedy. These gentlemen selected Griffin Bell for a judge in the fifth circuit.

First, they selected him as a campaign manager in Georgia, a job that I suppose took some courage. Being campaign manager for John Kennedy in Georgia—it was probably more difficult to get somebody than getting a campaign manager for Jimmy Carter in Georgia.

Then they went on and were so impressed with his integrity and his record in civil rights, which I presume they looked into, that they selected him as judge.

What do you have to say about that?

Mr. RAUH. I say two things, sir.

First, on the campaign for Senator Kennedy, I think that was a courageous act.

I do, however, have two notes I have been looking for as you spoke of things that appeared during the campaign which indicated that he had some reservations as to what he was doing at that time. There are two different points that we have come across.

There was a movement in Georgia for electors who would not be pledged. Apparently, Bell seemed to support that move of unpledged electors because he says, and this is in the Atlanta Constitution for November 3, 1960, Griffin Bell openly supported that stating in Savannah shortly before the November election;

If you vote for the Democratic electors, you will most likely be voting for Kennedy and Johnson. In any event, vote for the Democratic electors and then we will worry about what to do.

Another point was on the famous phone call from John Kennedy to Mrs. King. On October 31, 1960, Vandiver denounced John Kennedy for calling Mrs. King:

It is a sad commentary on the year 1960 and its political campaign when the Democratic nominee for the Presidency makes a phone call to the home of the foremost racist agitator in the country.

That is in the New York Times for November 1, 1960.

Griffin Bell then released a statement on the same date stating that the Kennedy call had been misunderstood and that he had merely called to inquire of the judge if King was entitled to bail.

That is in the Atlanta Constitution for November 1, 1960.

Everybody knows that that was not the purpose of the phone call.

But the main point I would make is that I don't believe Senator Kennedy or Robert Kennedy went into the civil rights of this matter.

Senator CHAFEE. Perhaps they did not in selecting him for a campaign manager.

Mr. RAUH. There has been a good deal of loose talk around on the question of the judgeship.

I do not know just how to put this because I do not want to get thrown out of here, but the fact of the matter is that the two segregationist southern Senators from Georgia had the most to say about who became a judge.

There is so much talk now about changing this system. We keep reading about this. The fact is that a judgeship like that was very much up to the southern Senators. That is one reason, if I may be bipartisan—

Senator CHAFEE. Please do.

MR. RAUH. For many years we got better southern judges from the Republicans than we did from the Democrats because the Republicans did not have any southern Senators for a long time.

If you take the great people on the fifth circuit, they were appointed by Eisenhower. The really great judges of the South, the ones that I respect so much, many of them were appointed by President Eisenhower.

Since there wasn't too much of a two-party system in the South, he did not have the same problems that a Democratic President has with that problem.

It seems to me a little bit naive to talk about that appointment as though they carefully went into his civil rights record. He never could have gotten appointed with his civil rights record because Russell—and who was the other Senator at that time—would not have allowed it to go.

You have got worse. You have got Cox in Mississippi who even uses a word that cannot come out of my mouth about blacks.

I have never been too critical of the Kennedy administration for their bad appointments in the South on judges because I was aware that it is kind of a Senate prerogative.

Maybe it will be changed. I keep reading in the paper that people are talking about it.

All I am saying is in 1961 Senator Russell and his colleague had a good deal to say about who would get it and it would not have been an integrationist.

Senator CHAFFEE. If we review Mr. Jaworski's statement, on the first page he seems to have been in consultation, or at least Mr. Segal was, the chairman of the Bar Association Committee, had been in contact with Deputy Attorney General Nick Katzenbach, who apparently was speaking on behalf of Attorney General Robert Kennedy.

So they were paying some attention to this matter. It was not just taking some nominee that had been surfaced by the two Senators.

MR. RAUH. No. A judgeship is a negotiation between the Justice Department and the Senate. It is a good healthy negotiation. Most times the Senators win if they feel strongly enough. Sometimes Justice gets somebody they want that the Senator does not want but the Senator will give in. It is a good negotiation.

Nobody can convince me that that was a civil rights decision when it had to be cleared by two southern segregationist Senators.

Senator Russell was our No. 1 opponent in the civil rights fight in the 1950's.

He is a very respected man and a man of high integrity, but the No. 1 opponent in the Senate on civil rights was Senator Russell.

The fact that the man would be appointed in 1961—I believe Senator Russell was still alive—would mean a negative factor as far as civil rights would be concerned.

Senator BAYH. If the Senator would yield, as the Senator from Rhode Island will find out, although he happens to be a Republican Senator and there now is a Democratic President, he will have a say-so on the confirmation process. If he happens to be a member of this committee, he will have a significant say on the confirmation process of judges.

If we are indicting Senator Russell for some involvement he may have had in the appointment of the judges under the Kennedy administration, we would then also have to give him credit for the nominations that came prior to that time.

In his role in the Senate, as one who came here as No. 100 when I was sitting way over just to the right of Mr. Sasser when I came to this committee, I understand the influence that he and other members of this committee had. He was not a member of this committee.

Excuse me for interrupting, Senator.

Senator CHAFEE. The final question I would like to ask is: In his testimony Judge Bell talked considerably about the school desegregation cases that he has handled in the fifth circuit and mentioned that he was accused once of being the school superintendent of Mississippi.

Now I gathered from his testimony that considerable progress was made in desegregation in those cases; yet I have not heard you touch on those.

You have done a pretty thorough job.

Could you comment on those cases?

Mr. RAUH. I think you are referring to the panel that was set up after *Holmes County v. Alexander*. That was a case where the fifth circuit had decided to go for total integration now. Then that order was stayed after Attorney General Mitchell and Robert Finch, I think, intervened against the total integration now order.

The case then went to the Supreme Court.

I believe it is *Holmes County v. Alexander*.

The Supreme Court said it is now and nothing can delay acting now.

I think they set up a panel. Judge Bell was on that panel which was carrying out that Supreme Court order that integration had to come now.

I do not know any reported decisions, and they may mostly not be reported decision, but orders under that. I am simply not capable of having gone into that.

I know that there was a panel created in the fifth circuit after the Supreme Court decision. It seems to me after that decision it would have been difficult not to have gone forward.

The Supreme Court language in *Holmes County v. Alexander* is very preemptory about getting rid of the segregation.

Senator CHAFEE. As I understood what Judge Bell said, I think he said there was some 141 cases. That might have been stemming from his acting through the fifth circuit and maybe they were not argued cases. I am not just sure what he was talking about.

Nonetheless, he cited those as representing some distinction.

As we all know, even today there are some communities in this Nation that are still having trouble with integration.

Apparently he was able to go ahead with integration in Mississippi in a manner that was satisfactory. We see no objections to his handling of those. That represents his most recent activities in this area.

Mr. RAUH. I don't know whether that was after *Cisneros* and *Austin* or not, but it may be. I would have to look.

The pro civil rights judges of the fifth circuit were so outraged with the August 2, 1972, cases.

I am not sure of the relative dates.

Senator CHAFFEE. Thank you very much.

Thank you, Mr. Chairman.

Senator BAYH. Mr. Sasser?

Mr. SASSER. Mr. Rauh, I am glad to meet you after many years. I have received letters from you or over your signature for many, many years. I am delighted finally to see you in person.

Mr. RAUH. Thank you.

Mr. SASSER. I want to ask you just one or two questions.

Given Georgia in the year 1958, and confronted with the choice—and I remember this vividly—the choice of public schools being closed and the talk of denying a whole generation of school children, black and white, any form of public education, or the choice of keeping the schools open with a plan of partial segregation on a temporary basis, what choice should Griffin Bell have made?

Mr. RAUH. I do not believe that choice was ever before Judge Bell or that he made any choice about that, sir.

Under Vandiver they had a law that, in effect, meant that you had to close all the schools in Georgia if you closed one. That was what caused the trouble because they were going to close Atlanta. They were threatening to close Atlanta. The mayor of Atlanta did not want them to be closed. He was safe as long as the law was you had to close all the schools in Georgia.

I suppose with all of the excitement and all of the talk no one ever seriously considered doing away with public education in any State in this country. I think it is a false alternative that was never really—the alternative was: Are you going to go to integration?

He has never shown that he took that alternative. What he has shown, and I am not clear here because there is some dispute about what his position was on the Sibley report, but I am saying Georgia went from massive resistance when it was clearly out the window to a Sibley report, which was both getting the maximum segregation other than massive resistance closing the schools and doing it illegally because they were going to do it through private school grants.

I do not believe that Judge Bell was ever faced with the alternative of closing the schools. I do not credit the idea that what he did was to save closing the schools.

The massive resistance laws he worked on—and did not walk out the door—were certainly not to keep the schools open. The Sibley Report was to keep the schools open by private school tuition grants.

I personally do not see that there was ever a choice for Judge Bell to make on keeping schools open.

Senator SASSER. He tells us the contrary, Mr. Rauh. He says that there was a clear and present danger in this mind—and I am not using his precise words—that the public school system in Georgia would be shut down. Prominent politicians were using that rhetoric in those days.

It appears to me that Judge Bell's actions were a moderating force trying to move in the direction of keeping the public schools open and trying to lower the level of rhetoric going on in Georgia and all over the South at that time.

Mr. RAUH. You have no single statement ever made by Judge Bell to anybody in those days that the alternative was keeping the schools open and he wanted to do it.

It is all being reconstructed now at a later date. I reconstructed it, but not from some memory of somebody. I reconstructed it from the actual records of those days.

All I am suggesting is that I simply cannot credit, and I do not know where you can find one piece of corroboration for the proposition that Judge Bell was a moderating influence and that he tried to keep the schools open. You have not got it.

I think this is the problem.

I would think if Judge Bell had been a moderating influence you could find some place where he said it, some memorandum he wrote to somebody saying: We have got to keep the schools open.

How is it that now when there is so much evidence to the contrary that he never did anything like that, that he cannot come forward with one scrap of paper that shows that he was, in fact, a moderating influence?

Senator SASSER. Let me ask you this, Mr. Rauh: Judge Bell has testified before this committee that the real reason for the Sibley commission was to embark on a public process of trying to sell to the people of Georgia; and to the political leadership of Georgia the fact that the public schools must remain open.

Are we not to believe Judge Bell on that proposition?

Mr. RAUH. I am not going to get the question of saying who one believes and what he believes. I am not going to get involved in that kind of a thing.

I will put it in my own terms. The Sibley commission was set up at the very moment when massive resistance died. It was the reborn again of massive resistance.

Judge Bell now, apparently having had his recollection refreshed, does not want to take responsibility for it. It was a segregationist document continuing illegal activities already declared so by the Supreme Court.

I cannot understand it. You are trying to give him his cake and eat it, too. You are trying to say that he was trying to keep the schools open and he set up the Sibley report for that purpose, but he has nothing to do with what happened in the Sibley report. I just cannot see that as a possible rewrite of history.

There must be somewhere, somehow, some documentation.

I am surprised, with all of the people in this room—all of the press, all of the Senators, all of the transition staff—if, in fact, he was doing something that he cannot find one scrap of paper to show it.

Senator SASSER. I have no further questions.

Thank you, Mr. Rauh.

Mr. RAUH. Thank you.

Senator BAYH. Are there further questions?

If not, Mr. Rauh, let me say if I were ever called before the bar of justice, I would like you preparing the brief in my defense.

Mr. RAUH. It would be an easy thing to do after your wonderful job in some of these fights we have been in together. That would be an easy and pleasurable thing to do, but I hope I am never called upon.

Senator BAYH. I share that hope.

Thank you very much, sir.

Senator MATHIAS. Do we understand that you are preparing further memoranda?

Mr. RAUH. There were two things, sir, that I was asked about. I think one of them Senator Bayh indicated he was going to do. That was the history of the Meredith thing.

The one I was asked for was any segregationist school cases after 1972—August 2, 1972. That is where I ended. I did agree to do that, and I shall do that.

Senator BAYH. Recalling your normal objective manner, you said pro or con; right?

Mr. RAUH. Yes, sir.

That would only be fair.

[Material subsequently received from the witness appears at page 599.]

Senator BAYH. Thank you very much, Mr. Rauh.

Our next witness will be Mr. Lonnie King, the former president of the Atlanta Chapter, National Association for the Advancement of Colored People.

I have just been advised by the chairman that the committee will meet tomorrow. The specific time of the meeting is still uncertain.

Mr. KING. Mr. Chairman, I have asked Mr. Warren Cochran to join me.

He has to leave. With your indulgence, I would like to ask him to go first.

Senator BAYH. Mr. Warren Cochran?

Mr. COCHRAN. Is that satisfactory?

Senator BAYH. Please proceed.

TESTIMONY OF WARREN COCHRAN, ATLANTA, GA.

Mr. COCHRAN. My name is Warren Cochran.

I do not have any documents. I am not a lawyer. I have had a lot of legal experience.

I have been a citizen of Atlanta for more years than I would like to tell people, but it was during the time we are talking about.

I am a YMCA worker and have served under the Truman administration as race relations director for public housing.

I am here to testify very briefly on behalf of Judge Bell on only what I know. I know about the Vandiver years. I know Judge Bell's activities. I know he was not an avowed segregationist during that period.

I was at that time, in addition to my work with the YMCA, the administrative director, which is an independent organization, by the way. My organization was segregated at the time, as was everything else in Georgia, including the public schools.

We formed what is known as the Atlanta Negro Voters League, which for 15 years helped to keep peace and to marshal the support of Georgians in Atlanta, particularly. It was bipartisan, Republicans and Democrats. I happen to be a Democrat.

We had less than 10,000 voters. We spent hundreds of dollars trying to get people registered.

We had the party unit system, the country unit system. We had the white primary, which, as you know, was not declared unconstitutional until the late 1940's.

I was one of the ones that brought suit on that.

We had a totally segregated State—no point of contact anywhere.

We had a school system that was totally segregated. We had everything else segregated, including buses, methods of transportation, et cetera.

Now, I said in the beginning my testimony is limited because I am not going into all of the ramifications I have heard here.

I will tell you only this: It was 1965, 1966, and 1967 when there were the marches, of which I was a part. I signed over \$150,000 worth of bail bonds.

My record is pretty clear, my interest in integration.

I am not a southerner by birth, although my people are up in Charleston, S.C.; but I happened to be born just as they moved north and I went to school in the North.

I came south because the North was totally segregated.

In my 30 years in the South, I can say this: With all the difficulties I had and all the segregation, it was just as bad in the North as it was in the South.

I would much rather take a chance with a southerner who was emancipated, if you want to use that word, than a northerner.

If I can digress just minute from the Vandiver situation, we had lynchings in Georgia. Because I was able to travel throughout Georgia without being recognized, particularly as a racist sometimes, I was able to gather information. We had a terrible lynching in Monroe, Ga., in 1946. Four people were executed.

I went to that town, got the facts, even brought some people out of Monroe. I furnished the facts and we had hearings. The FBI came into the question.

I even have the young man today working for me—he is not a boy anymore; he was a boy then. We had to move his family. He worked for me and is still working in the Butler Street YMCA as our head maintenance man.

But the point was that those hearings were held. We identified every one of them. Nothing happened with the Justice Department.

I could cite numerous cases of flagrant violations in the South by so-called rednecks.

The point I am trying to make is in Atlanta we had to work with a group of people to maintain a semblance of order. Atlanta can be a very volatile place.

When Vandiver was elected on this platform—and he was preceded by Marvin Griffin, whose name has not come up here—but there was nothing but total segregation and massive resistance to everything.

Judge Bell's position in this matter was very simple. He was appointed. He worked as a young lawyer. He was in his thirties at the time. He worked at King & Spalding, one of the most illustrious law offices in Atlanta. He was so-called chief of staff. There are colonels in Georgia. They serve sometimes without pay.

The one thing in Judge Bell's favor which made me come here and testify—and, gentlemen, I am not paid by anybody. I work for nobody. I am not paid by the transition committee. It is costing me a couple of hundred dollars, which I don't have particularly.

I am here not as a particular close friend of Judge Bell because we did not have that type of relationship. I am here because I knew at

the time of the Vandiver situation and the man who preceded him, Marvin Griffin, that he was elected with very few black votes. We did not have the right to vote. We were prevented from voting in many cases.

Judge Bell set up a committee, of which I was a member. He did not set up a committee. He asked the Voters League.

He kept us informed every step of the way what was happening in the Vandiver situation. We did not meet with Vandiver. We refused to meet with Earnest Vandiver.

Earnest Vandiver was a great disappointment to us when he came out on the stand that he did because Earnest Vandiver is a very wealthy man. He is a millionaire many times over. He did not have to take the stand he took, but he was a politician.

The only way you could get elected in Georgia in those days was to form massive resistance.

We had to work with that situation for many years. Every time they had a meeting—and I am talking about Jim Gillis and many other people who were on Governor Vandiver's Staff, all getting paid.

The State was in massive debt when Vandiver took it over.

We were asked by Judge Bell, and he said: I am doing this voluntarily because we want you to know what is happening. I am trying to convince Earnest Vandiver to change his position.

Earnest Vandiver did not change his position.

When the Sibley commission, and much has been said about it here—now John Sibley is one of the most respected men in Atlanta, in the South, and in Georgia. John Sibley was asked, when they first asked John Sibley to set up that commission, many of them said they were going to vote against it or they would quit. They didn't. They went ahead and set the Sibley commission up.

The final Sibley report was not Judge Bell's report, to my best knowledge and belief.

Judge Walden was chairman of the Democratic Party. John Leslie Dobbs was chairman of the Republican. Black Republicans and black Democrats, we had no entry into the Democratic Party of Georgia at the time I am talking about. That did not happen until way into the 1960's.

We carried on as separate.

I suggested that we try to do just what Julian Bond did later, integrate the Democratic party at the national level.

I have been a Democrat all my life, gentlemen. I have stuck to the party. The Democratic Party has neglected the southern Democrats, black Democrats, all these years.

It was not until all the civil rights movements in the 1960's that they began to change their attitude. Now we have a totally integrated party.

Senator BAYH. The distinguished witness made that comment that referred to elephants and my mind flashed back to my first days in the Indiana General Assembly where there was a factual situation presented on a very controversial bill on which there was great divergence of opinion.

One of the gentlemen got up and began his discussion of his position by saying that this reminded him very much of a blind man asked to describe an elephant, and it all depended on what part of the ele-

phant you touched, whether it was the tail, the trunk, the ears, the foot, or the side.

It has been amazing to me to see the divergence of opinion from very sincere members of the same race that look at this nomination from different perspectives.

Mr. COCHRAN. May I make one comment?

Senator BAYH. Please.

Mr. COCHRAN. Clarence Mitchell is a friend of mine. I am a member of the NAACP.

Senator BAYH. He is a friend of mine, too.

Mr. COCHRAN. I thought he made an excellent statement. I think he was wrong in many parts of it, as was attorney Rauh. I thought they made a good statement.

If it was done to put Judge Bell on notice that he was going to be totally watched, that is good. I approve of that.

As far as some of the allegations that were made, they were not true.

Senator BAYH. I just want your opinion. I don't think you should try to second-guess what Clarence Mitchell might say or Joe Rauh, just as I question whether they are in a position to judge your feelings. We just want to get your opinion and Mr. King's opinion from your own personal testimony.

You mentioned that Judge Bell at an early age discussed this Vandiver question with a group of citizens down there.

Mr. COCHRAN. I would never have met Judge Bell if he had not asked for this meeting.

Senator BAYH. He told you at that time he was trying to change Judge Vandiver's mind?

Mr. COCHRAN. That is correct.

We all knew what the situation was—massive resistance. He was in a peculiar spot. He kept us informed every step of the way of what was going on in the Governor's office. We knew what was happening. We knew everything, only because Judge Bell informed us of many things that the papers didn't carry.

Senator BAYH. You are satisfied that that was evidence of sensitivity to the problems that existed in the black community and their inability to have—

Mr. COCHRAN. That is the only way I could construe it, sir.

Senator BAYH. You mentioned, as I recall—if I am wrong, you tell me—that both Judge Bell and Mr. Sibley said they were disappointed with the Sibley report. Could you tell us a bit more about that, please? Under what circumstances—

Mr. COCHRAN. I knew Mr. Sibley personally. The other members of the committee didn't know him too well at the time.

I happened to see him once just informally.

We knew it was going to be very difficult. The best we thought could come out of the Sibley committee was that a man of John Sibley's stature would move into every county. There are 159 counties in Georgia. John Sibley then was in his 70's almost. For a man of his stature to go in every county of Georgia and have open meetings—I attended two of them.

There was violent resistance at first, but because he was Mr. Sibley, they began to listen. That broke the back of some of the terrible resistance in Georgia.

In spite of the bad report, and I have read the Sibley report, but that was the best that could be gotten out of it at that time. You don't look at the report alone; you look at what was done.

For the first time, going into rural counties of Georgia and talking about the law-of-the-land that has to happen as soon as possible, and how we do it.

Senator BAYL. We heard a finite assessment of some of the provisions, the legal impact of the provisions of the Sibley report. Are you telling this committee that in communities of Georgia the Sibley report was conceived as being a strong movement against segregation?

Mr. COCHRAN. Absolutely. Absolutely.

Senator BAYL. Are you sure your memory is correct on that?

Mr. COCHRAN. My memory is correct on this because I read some of the local papers at the time. There was massive resistance to everything.

In fact, I have heard in some places that even he was almost threatened, but they gradually accepted the idea because it was John Sibley. John Sibley was a man who was respected throughout Georgia.

There are two or three great men in Georgia. There are many of them, but there are two or three. One is John Sibley; another is Bob Woodruff of the Coca-Cola Co.

John Sibley was a man that really began to open up the idea of the law-of-the-land that had to come, even though the committee's report didn't reflect all of that.

Attorney Rauh was correct in much of what he said if you look at it just factually.

Senator BAYL. Let's look at that and everything else that you know about Judge Bell as it applies today, with the mission that is before us.

You have made a significant contribution, I think, in trying to relate the activities that happened at that time with the environment and your recollection of the facts as they existed at that time, not with the 20/20 vision of hindsight.

I gather that you feel that Judge Bell at that time conformed to a standard of sensitivity that was acceptable to you and your neighbors in the black community.

Now we are in the 1970's, 1977, and Judge Bell is being recommended for a much different post as the Attorney General of the United States, the No. 1 advocate, the protector really of these very rights for the citizens not just in Georgia who are sensitive to a different kind of slow progress, but the rights of all the citizens of this country, where the experience has been different.

The question that each of us has to ask, I think, in light of everything that we know and that has been disclosed: Will Judge Bell as Attorney General of the United States meet a standard that an Attorney General of the United States should meet today?

Are you comfortable with that?

Mr. COCHRAN. My answer is unequivocally yes, on the basis that he knows blacks and the difficulties that blacks have suffered more than anybody else. He is more intimately acquainted with it.

I would trust him as I will trust any southern or now almost before I will most northerners, from what I know over a long span of years in the area of civil rights.

We get a lot of rhetoric about civil rights, but we get very little performance.

I go back 35 or 40 years of trying—of recording case after case, as I said to you in the beginning, to the various Attorneys General.

There were terrible cases of lynchings and other things that were not touched. They were furnished with every bit of information.

On that record, Senator, do you expect me to say that I would not trust a man that I know?

Senator BAYH. I expect you to say what is in your heart, and you are doing a pretty good job of that.

Mr. COCHRAN. The answer is unequivocally yes, I will trust him and hold him strictly accountable, as I would anybody else.

I just know that he will perform.

Senator BAYH. Senator Mathias?

Senator MATHIAS. You made a very powerful statement here. The committee appreciates it.

As I understand what you are telling us about the Sibley report, although judged by the standards of 1977, it may look like a regressive document, as Mr. Rauh described it; but as of that time it brought about some dialog on the subject of school desegregation; is that right?

Mr. COCHRAN. That is correct.

Senator MATHIAS. In other words, here was a subject which was not considered to be a subject for polite conversation in Georgia at that time?

Mr. COCHRAN. That is correct.

But we are not talking about 1965, 1964, and 1966. We are not talking about the Kennedy-Johnson Civil Rights Act. We didn't have those in those days.

These are the problems that we had at that time.

I told you my testimony would be short. I have said it just the way it is.

I am in the pay of nobody. I voted for Jimmy Carter, of course. I know Jimmy Carter. He did not ask me to come here. Judge Bell did not ask me to come here.

I happened to make a statement when some of the things came up in the paper. I said what I knew about my connection with Judge Bell during the Vandiver years.

Those are true. I have no axe to grind. I ask for nothing. I do not want a job.

If I told you my age, you would say I was beyond the age of employment anyway. I am in semiretirement, but I am very active in Atlanta.

All you have to do is run a record on me in Atlanta. I daresay I could be elected to the Fifth Congressional District in Atlanta if I ran. That is how much support I have in Atlanta.

I think most of the people, both white and black, would tell you that I could probably win the race in spite of the fact that my good friend Billy McKenny is running for it, Mr. Abernathy, John Lewis, and others.

I have been asked to run for the county commission and the city council. I was appointed to the city council. I did not serve in the last administration.

Nobody buys me. I don't lie to anybody, not because I am better or because I never tell a lie; but I will never tell you a lie, to quote my good friend.

The fact is I do not have to—I want nothing. I have told you like it is regarding the Vandiver years and the Sibley commission.

When the Sibley Commission came to be published, Judge Bell came to us—he was attorney Bell at that time—and told us that he was completely disappointed. I said, shall we go to Mr. Sibley? He said no. He said, Mr. Sibley is disappointed.

Don't ever underestimate the value of the Sibley commission in spite of what attorney Rauh and others have said. If it had not been for the Sibley commission, which was the first step toward educating people, white and black, particularly white—when a man like John Sibley, and John Sibley almost owned the trust company of Georgia. He doesn't quite own it, but he is in charge of it. He was president and then chairman of the board.

He is now 83 years old. John Sibley is a very honorable man. There are a lot of honorable people in Georgia. They are not all segregationists. They might have been in the beginning, but we have educated many of them.

In the early days we couldn't even sit down to eat. They were afraid. They would have to call you quietly and I would have to set up a special meeting.

We did all of those things and I don't apologize for them. I don't apologize for a thing because you had to survive, as Clarence Mitchell said, but not because we were chained in the mind. We did it because we were trying to protect a situation and to make an orderly process.

When the Supreme Court decision in 1954 was issued in the Warren Court, it took years. They said "with all deliberate speed," but you don't overturn something, and I am not saying this as a segregationist. It takes time. You don't want violence.

Look at the record of Georgia. There is no violence in Georgia—there was in many other places—not even when Martin Luther King set up his headquarters there.

Martin Luther King, incidentally, grew up in the Butler Street YMCA. He was a personal friend of mine, as was Andy Young when he came to Atlanta and as was Senator Johnson.

They all worked for me. This young man worked for me.

I could go on and on and on.

We were free as we could be. We worked quietly. We worked vigorously. We never compromised basic principles, but that does not mean to say we went in the streets all the time and wanted to get arrested. That didn't serve any purpose.

When we desegregated the restaurants, we had many meetings. It took weeks.

The kids were in the street. I signed over \$150,000 worth of bail bonds. They conducted themselves decently and we got them out. The sheriff and everybody worked with us in those things.

Coming back to Judge Bell, I have said, and that is my only testimony, that Judge Bell was the only one who came and asked us to meet with him.

They named three or four things: the condition of the finances of the State of Georgia, the terrible thought about what could happen

with the closing of the schools, and he asked us if we would be what you would call a moderating influence.

He said over and over: This is the law of the land. It is going to be enacted. It is going to happen. I want to buy a little time. I don't even dare tell Vandiver some of the things that I am telling you.

That was his performance there. On that basis and what I have seen since, I would trust him with the Attorney General's office.

Gentlemen, that is my statement. It is not written. If you haven't taken it down, I will go back and write it. [Laughter.]

Thank you.

Senator BAYH. I thank you, Mr. Cochran.

I do not think if you had written it down it could have been any better. It was very sincere.

You said earlier that you came at your own expense?

Mr. COCHRAN. Nobody asked me to come, particularly. When I made a statement, they called me from the Journal and the Constitution, and ABC tried to get me and I refused to go on television then.

I had an appointment. In fact, I tried to meet them last Saturday, but I decided against it because I decided then I was coming to this committee.

Then I got in touch with Judge Bell's administrative assistant and told him I was coming and asked him to put me on; but I paid my expense.

I came up yesterday with no bag. I had to go out yesterday and buy \$20 worth of stuff in order to stay overnight.

Senator BAYH. Mr. Cochran, I don't want you to destroy your own credibility, so I won't ask you what you can buy for \$20 these days. [Laughter.]

Certainly not that shirt and tie you have on there.

All right. You paid your own expense.

Is there anything that the Attorney General, the Justice Department, or for that matter the President of the United States can do to help you at the YMCA, personally?

Mr. COCHRAN. There is a whole lot you can do.

Senator BAYH. I am not talking about general national policy, but there have been a number of inferences as to why there might be differences of opinion among citizens of the black race.

One logical inference might be, and has been, if someone comes up here and says nice things about Judge Bell and he gets to be Attorney General of the United States, there might be reciprocity.

Is there anything that you can conceive of that the Attorney General of the United States might be able to do to repay you?

Mr. COCHRAN. I have never asked a favor of anybody for myself.

I have gone to the Attorney General of the United States many times for other people. I work with the prisoners' rehabilitation program. I work with all the jails.

I have tried to help to reform the jail system of Georgia.

I have gone to many judges. I have never gone to Judge Bell. I have never had to.

I am chairman of a committee now of the Fulton County jail to improve the conditions there.

No. There is not a thing anybody can do for me. I have never accepted a favor.

Senator BAYIL. Forgive me for asking the question, but others have been wondering.

The statement was made, and apparently you heard it, about the elephants—

Mr. COCHRAN. I heard it.

Senator MATHIAS. You are saying to us that as the result of the existence of this Commission, it was turned into a subject—

Mr. COCHRAN. The first time it was accepted because even the papers there—

Senator MATHIAS. It was not accepted because by its own terms it was—but at least it was discussed.

Mr. COCHRAN. It was put into the open as the law-of-the-land that had to happen.

Senator MATHIAS. I think that is an important point.

Mr. COCHRAN. Very important. That was the way it was.

Senator MATHIAS. I wanted to be sure that was my interpretation of what you were telling us.

You said that when Judge Bell called you up, he wanted to come see the committee. Is this the committee—

Mr. COCHRAN. I was executive secretary for what was then the Atlanta Negro Voters League.

Senator MATHIAS. That was bipartisan?

Mr. COCHRAN. Bipartisan.

We handled mostly Atlanta area or Atlanta City affairs. We had a coalition with the eighth ward. We usually worked together to get the best we could of people who would be responsible. We did not have enough votes to vote any black in at the time. It was citywide.

Senator MATHIAS. This was your first acquaintance with Judge Bell?

Mr. COCHRAN. That was my first acquaintance.

He asked for the meeting. He asked us to keep it very secret and quiet because he would be censored if even Governor Vandiver knew about it at the time.

Senator MATHIAS. Can you fix in your mind the time?

Mr. COCHRAN. It was 1959, 1958—the first meeting. We had several.

When Governor Vandiver had been elected, at least in the primaries, he was elected in the primaries in September of 1958 and he took office in 1959, we had a series of meetings. He would meet with the Governor's staff and then come back and tell us some of the things that happened. We would say that we couldn't go along and so forth.

He was saying if we could have some time: I think I can change the Governor's mind on something. I can change some of the assistants on some things, if we just have time to work it out.

In the meantime we had to organize. We did not have money. We were going into court on the decision.

There is one other thing that I did not bring out. We had a lot of resistance from black teachers and others at the time.

I mean when you have a totally segregated system, then you have a big group. We didn't have a whole lot of resistance, but we had some.

We had to go to the black public and talk to them about some of these things. There was fear in the minds of many of them—losing jobs and everything.

We had problems to work out. It took 2 or 3 years to work those problems out.

Even if somebody wants to call me an appeaser, I will tell them that under the circumstances and what we had to go through, that was the only way it could be done at that time.

I am a moderate. I suppose. I am an integrationist of the first order. I wasn't brought up on segregation. I have never accepted segregation.

I have never ridden in a bus. My wife hasn't ridden in a bus, in the back of a bus. We have never accepted segregation anywhere. We did it in our own way.

In Georgia, from the time I went there in 1940 until the civil rights movement, really, with Martin Luther King—the marches and so forth—we had to go step-by-step.

If you want to call it survival, yes; but you had a million people to survive, too.

When you go into rural Georgia, as I have pointed out, and see what has happened with no redress—you think three or four times before you jump up.

Senator MATHIAS. I am familiar. I remember from my own experience in Maryland that the dislocation of black faculty was, in fact—

Mr. COCHRAN. It is a very important point.

Senator MATHIAS. It was a separate problem, but it was, nonetheless, a very real, human problem. It was a problem that was serious for those who were involved in it.

I do want to recur, if I can, to fix the date of this first call. You recall it was back during 1958?

Mr. COCHRAN. It was just after Vandiver had been nominated, which was tantamount to election, in the primary. He succeeded Marvin Griffin, a total segregationist. He had run on a platform of total segregation. There were not enough Negro votes to oppose him. In fact, there was very few Negro votes throughout the State.

It was 1959, 1958. It was before he took office. He took office in January of 1959, so it was November and December when we had our first meetings, but they continued at different intervals.

It was Judge Bell who sat those meetings up with Judge Walden, who is now deceased; C. I. Yates, whose funeral I attended last week; John Calhoun; Tim Alexander, local businessmen and professional men who were on the executive committee of the Voters League in Atlanta.

Senator MATHIAS. During this period Governor Vandiver was making appeals to the black community, wasn't he? Wasn't he advocating to the black community that it was within its own interest to maintain segregation?

Mr. COCHRAN. He was making statements, yes.

Nobody took him seriously. Nobody was going to go along with that. There wasn't any desire to accept what he was talking about, but he did say a lot about it and did call some people together. I did not attend any of his meetings, however.

Senator MATHIAS. But you interpreted what Judge Bell told you as being that he was going to try to change the Governor's attitude?

Mr. COCHRAN. He was trying to change it. It would take time. Even then, he wanted us not to stage a massive resistance, which we couldn't

have done anyway. We weren't prepared to do it. It takes money and everything.

We were preparing to raise money and so forth to test many of these things, but many of us laughed at some of the things because obviously they couldn't be put into effect.

Senator MATHIAS. You said that you had known Dr. Martin Luther King?

Mr. COCHRAN. He grew up in the YMCA.

Senator MATHIAS. When he moved back to Atlanta in 1959, Governor Vandiver said that he would not be welcome and that he would be kept under surveillance.

Mr. COCHRAN. That is correct.

Senator MATHIAS. You remember that?

Mr. COCHRAN. I remember it, yes.

Senator MATHIAS. Did you ever discuss that particular episode with Judge Bell?

Mr. COCHRAN. No. I never discussed it with him.

We served as headquarters at the time. Andy Young was the liaison person, Reverend Abernathy, and Reverend King's office was right around the corner from where my office was and I set up a whole floor, which I donated, in the YMCA for many of his people from all over the country to join him there. So I had close contact with him.

Coretta King, his wife, sang for us on many occasions. We were very close.

In fact, his father came and was on our committee, M. L. King, Sr. He is a very close friend of mine. He was on the committee. He did not attend many of these meetings, however, at the time, but he was well informed.

He was a member of the executive committee of the Negro Voters League.

We were very close to the Kings all the way through because we are just around the corner from where the whole King setup is, the Abernathy church.

Senator MATHIAS. A year later during the Presidential campaign of 1960, Senator Kennedy, later President Kennedy, made a phone call to Mrs. King. Governor Vandiver felt compelled to comment on that.

He deplored the fact that Senator Kennedy had called the home, and I am quoting now, "the home of the foremost racist agitator in the country."

Did you have occasion to discuss this?

Mr. COCHRAN. Not with Judge Bell, no. I discussed it with a lot of other people.

Senator MATHIAS. Your conversations with Judge Bell dealt largely with the school situation then?

Mr. COCHRAN. That's right.

I said in the beginning that is my only area of competence, my relationship to that. It is very limited except for that one point which I wanted to make that I did it at my own expense and everything else.

Senator MATHIAS. Thank you, Mr. Cochran.

It has been very interesting. I think you can feel that the time and money you invested in this trip have been a contribution to government in this country.

Thank you.

Sneator BAYH. Senator Rieggle?

Senator RIEGLE. I appreciate your coming as well and have listened with great interest to what you have had to say.

How many meetings would you say there were that Judge Bell took part in with you and others during this period of time?

Mr. COCHRAN. They extended over a long period of time. They started in 1958 as soon as Vandiver was nominated in September, or November I guess it was, 1958. Then they went on at various intervals. I could not tell you how many.

They were private meetings.

Senator RIEGLE. Would there be as many as a dozen?

Mr. COCHRAN. There were more than that over the period of time. I would say it went on in to 1961 and 1962 after Vandiver took office.

On one or two occasions the Governor's staff threatened to resign if they even approved the Sibley commission, but the Governor finally went ahead and approved John Sibley. None of them resigned.

Senator RIEGLE. Was Judge Bell the only member of the Governor's staff that was sort of the go-between here?

Mr. COCHRAN. He was the only one. That is correct. That is why I have high regard for him.

Senator RIEGLE. Do I understand what you said earlier? It is your belief, I gather, that the Governor knew that he was meeting with you, that he was not doing this—

Mr. COCHRAN. I cannot tell you that. I have asked him that. The answer generally is no, although I have some feeling that even then the Governor, Earnest Vandiver, knew that this thing was going to fall. He wanted some period of time.

His statements were so abhorrent that no black, no decent black, would even meet with him.

Senator RIEGLE. So it is your belief that Judge Bell in a sense did this in secret and did not tell the Governor that he was meeting with you?

Mr. COCHRAN. I don't think he did.

Senator RIEGLE. You don't think that he did?

Mr. COCHRAN. I don't think so.

Senator RIEGLE. We will have the chance to ask him, and then we will know.

It is interesting to me that it is your belief that he was really acting on his own initiative.

Mr. COCHRAN. I thought he was and I still think he was.

Senator RIEGLE. I am a bit surprised in response to Senator Mathias' questions of some of the things that were happening at the same time that were so clearly civil rights oriented with Martin Luther King and the other items that were mentioned there that those would not have come up in conversation.

I gather that the temper of the moment was that things were hot, but you say that none of these other matters were discussed?

Mr. COCHRAN. Not to my best knowledge.

Senator RIEGLE. Just the school matters?

Mr. COCHRAN. Yes. That's right.

It was several years later, you will remember, when Martin Luther King came to Atlanta. Was it 1964, 1965.

Senator RIEGLE. I had understood Mr. Mathias to date that in 1959, but I could be mistaken.

Mr. COCHRAN. He came there, but he did not set up headquarters until the 1960's. It was in the 1960's.

Senator RIEGLE. These meetings when they would take place, how many folks would tend to be there offhand?

Mr. COCHRAN. Members of the executive committee. C. I. Yates was usually there, Tim Alexander was to some of them, John Calhoun and Judge Walden, too.

I am not clear. I looked for these records, but they were kept in Judge Walden's office. When he died in 1965, most of his records were destroyed, so I can't really tell you.

John Wesley Dobbs, who was Mary Jackson's grandfather, was a member of the committee.

The executive committee of the Negro Voters League was formed in 1948 after we had tied up several times and lost elections with the few votes that we had because we took opposite sides. So we formed in the Butler Street YMCA what is known as the Negro Voters League, which for 12 to 15 years operated to solidify the Negro vote in Atlanta.

For instance, when it came to State matters and the Governor and others, we separated because we obviously had different parties.

Senator RIEGLE. I won't go on at great length here, but I want to understand a little better the content of the meetings that you had.

I would take it that a meeting would be arranged and Mr. Bell would come. He would brief you on what the lay of the land was in the Governor's office?

Mr. COCHRAN. Some of the meetings were held in his office.

Senator RIEGLE. What did he ask you to do? Was there an appeal to the group, that the group do certain things or not do certain things? Was he simply reporting on what was happening or was there an effort to try to secure some kind of response from the group?

Mr. COCHRAN. There was an effort, of course, to get us, which we agreed in the beginning, to go slow, to buy time until we could work this thing out.

The Sibley commission didn't come out the first few meetings. That didn't happen until after 1960.

The idea was we went over the budget of the State. One thing that is clear in my mind, the State was in serious financial difficulty.

We were asked by Judge Bell, he said: First, I am going to keep you informed of what is happening and I want you to work with us to see if we can hold off for a short period of time any massive action in the way of suits and so forth until we can bide time to see if we can work something out.

Out of that then came the Sibley commission, which we knew was being set up, a commission to try to educate the people. Later, of course, everybody knew we were going into suits on the matter.

The other thing that I did mention was that the threat of closing schools was one of the worst things we had to face. Closing every public school—that was made over and over again.

We said under no circumstances do we want the schools of Atlanta and Georgia closed.

Senator RIEGLE. I gather, though, there probably were two schools of thought on that. You indicated there were a group of blacks at the

time who had a vested interest in maintaining the black schools simply because their own circumstances were directly involved. I assume that there were also other black people in the community whose impulse in terms of integrating the schools may have been their primary motivation? Or was there not such——

Mr. COCHRAN. No, sir.

Senator RIEGLE. There was not?

Mr. COCHRAN. There was not.

Senator RIEGLE. There was only one group?

Mr. COCHRAN. This group that I am talking about represented the community at that time and everybody knew they were honest and deliberate and they were waiting to see what we would recommend.

If that sounds impossible to you——

Senator RIEGLE. No, no.

Mr. COCHRAN. That was the condition at that time.

We were respected and I think even to this day if you took a poll you would see we were respected.

Senator RIEGLE. Basically, then, it was the judgment of the black group that you were part of to basically accept the conditions of segregation at least for a time on the notion that if you were to buy some time, maybe there would be some avenue in the future to work this thing out?

Mr. COCHRAN. We never accepted segregation, either personally or as a group. We tolerated it and bought time until we could work the thing out without violence and without street fights and without deaths.

Senator RIEGLE. That is what I want to pin down.

Let me use your word, tolerate.

There was a clear decision by the group to be willing to accept the existing situation, at least for a period of time, in part because of the representations that were made to you by Mr. Bell that he was going to work on the inside to try to move things along?

Mr. COCHRAN. There is another word that you used that I don't like, Senator. You said "vested interest." I didn't think it was vested interest. It was their jobs, their livelihood. You were talking about teachers.

You have to live in an area and you have to know what is going on, really.

Senator RIEGLE. I meant it in the sense that you just implied here in terms of the other sense. I did not mean it in——

I yield to the gentleman.

Senator MATHIAS. A thought occurs on that.

When you talked about buying time, did you contemplate it would be 10 years?

Mr. COCHRAN. No, sir.

Senator MATHIAS. Of course neither you nor Judge Bell could have known, but it was, in fact, 10 years?

Mr. COCHRAN. We knew what the law was. We knew what was going to happen. We had to try to make an orderly transition if it were possible. Since we had suffered for 150 years and didn't have any redress, we thought we could wait a few months more or a year, if necessary.

Senator MATHIAS. In fact, it was 10 years?

Senator RIEGLE. I would have thought, too, that when these recommendations were put forward that that must have put a chill on the group, at least initially.

Mr. COCHRAN. It didn't because we were informed of what was going to happen. We knew some of them before they came out.

We kept our constituency informed. We had periodic meetings. We met with all the ministers from time to time. It wasn't just this small group because we were telling them just what was told us, within reservations. The community accepted that at that time and was willing to go along until something could be worked out to get rid of it.

Senator RIEGLE. Was there a point at which there was a split developed within the community?

Mr. COCHRAN. In 1965 after the terrible—and even then they weren't too bad. Some new young bloods came in. About that time I got a call to leave and go to New York for a while to head up a YMCA there. I came back later then.

That was when the voters league went out of existence. A new group was formed.

Then began the integration of the Democrats and the Republican Party.

The only way we had of expressing ourselves in those days was the party.

That did not end until 1963 or 1964. Now it is totally integrated, of course.

Senator RIEGLE. I might just say, before yielding back, that I have had the occasion to travel through south Georgia even in recent years. Those experiences give me some slight sense, at least, of why the task of changing attitudes on something that went as deep as this would have been incredibly difficult at that time.

I appreciate your coming.

Mr. COCHRAN. Thank you, Senator.

Senator KENNEDY [acting chairman]. Mr. Cochran, I would just like to join in welcoming you here and congratulate you for taking the trouble to make the trip.

I am a little confused over two things. First, the Sibley commission as it went out through the 159 counties, as I understand, your feeling about it was that for the first time it brought people, blacks and whites, together to discuss matters of schools. Is that correct?

Mr. COCHRAN. That was the first time.

Senator CHAFFEE. Were there any blacks on the commission? It was a totally white commission?

Mr. COCHRAN. Right.

The meetings were segregated many times.

Senator CHAFFEE. What would happen? They would go to some rural county—they went to every county, did they?

Mr. COCHRAN. Almost every county. I don't think it went to every county, but they had regional meetings.

I attended one in Atlanta and I think one in Rome, but it wasn't in every county. I said 159 counties.

Senator CHAFFEE. They went throughout the State, anyway?

Mr. COCHRAN. Yes.

Senator CHAFFEE. They would then invite the public to come and express views and blacks would come?

Mr. COCHRAN. That's right, blacks and whites.

Senator CHAFEE. They would express their views as to what kind of a school system they wanted?

This was considered a great breakthrough at the time?

Mr. COCHRAN. The breakthrough. It was really the first breakthrough that we had to begin to alert white citizens of Georgia and black citizens that we had a new law on the books that had to be obeyed.

We had to work out something whereby we could conform to this law.

My memory of the meeting I attended in Atlanta is fairly—it was a very open meeting. I have even forgotten where that was held. It was a large assembly.

Everybody talked and asked questions and answered them. Many blacks were reluctant to ask questions. They were not used to it. It was a new experience for them, but finally they did.

I got the impression, but this was not from talking to John Sibley—and I know him very personally—he was trying for the first time to make citizens of Georgia aware that a change was coming.

Not even Mr. Sibley, as I understand it, knew what the terms of that Sibley commission report would be.

They were not satisfactory. They were not satisfactory to us, of course, when they were finally written.

The only good thing that came out of that report was the question you just asked. It was the first time that the black and white citizens of Georgia got together to talk about how do we make change. That was a breakthrough in Georgia at that time.

Senator CHAFEE. Let's discuss the meetings with Judge Bell.

As I understand, the situation one of Judge Bell's assistants called you and asked to get together with your group, which was the Negro Voters League of Atlanta?

He met with you but indicated that this was not at the direction of Governor Vandiver and, as a matter of fact, it was without the knowledge of Governor Vandiver?

Mr. COCHRAN. He didn't say that specifically, but we gathered that. He implied that he was doing this on his own and because it was a very difficult situation.

He knew that we knew the stand of Vandiver. It was not his stand, but he had to work something out with the community. He wanted to inform us of what was happening.

He did swear us to secrecy in the beginning. I know that. I thought from that that Vandiver did not know about it.

Earnest Vandiver was very, very vitriolic on this question, as you know from the papers and other things you have heard and read on massive resistance and that no white child will ever attend an integrated school.

Judge Bell was in a very difficult situation. As I say, he was not a judge at that time.

I took that as an indication of good faith, that he was trying to play fair with the black community. I believe that very fully.

Senator CHAFEE. Furthermore, there were some meetings, as I understood, at his office, you said; at his office in the Capitol or his law office or where?

Mr. COCHRAN. They were at his law office at night. They were at night.

Senaror CHAFEE. At the King and Spalding office?

Mr. COCHRAN. Right. The Trust Co. of Georgia building.

Senator CHAFEE. One way of looking at this, I suppose, if you look at it in the most harsh way, would be to say that you folks were prepared to file some suits?

Mr. COCHRAN. We were ready. We were getting ready. He knew it and everybody else knew it.

Senator CHAFEE. So looking at it the most harsh way would be that he went and told you to cool it for a while, to ease up on the suits?

Mr. COCHRAN. We were not ready to file the suits anyway. We didn't have the money. It took time and effort.

It was not that phase of it that I got from him at all. I mean, he knew that was inevitable, as a lawyer, and a very skilled lawyer.

Senator MATHIAS. Would the Senator yield at that point?

Senator CHAFEE. Yes.

Senator MATHIAS. To refresh your recollection, the case of *Calhoun v. Latimer* had been filed on January 11, 1958. The case was pending.

You told us that this meeting happened immediately after the primary, which was tantamount to election.

Mr. COCHRAN. That is right.

Senator MATHIAS. So the problem had become the Governor's problem as of the time of the primary?

So here you had the law case pending and you had the Governor nominated, virtually elected, so that, as Senator Chafee has suggested, the yoke was around his neck at that point?

Senator CHAFEE. What I was saying was that if you took the cautious view of this—and I am asking you for comment—it might be that Judge Bell, a representative of Governor Vandiver, had you folks hold things off in order to give him more time to work things out. But if you had held off the courts, you might have been better off if the courts had gone ahead?

Mr. COCHRAN. We don't think so.

Senator CHAFEE. I would like your comment.

Mr. COCHRAN. We were not ready at that time. We had a lot of spade work to do ourselves. We had money to raise and everything else. These things cost a lot of money. You don't just go into court.

We wanted to keep the schools open. That is No. 1. It was that terrible threat. Very frankly, yes.

In light of today, maybe you say we should have closed the schools and we should have taken what came. That was not the philosophy at the time and it would had disrupted every—if that is appeasement, people will have to make the most of it. That was the best judgment of a lot of people at that time, blacks particularly, and the best thinking white people that we had faith in.

Judge Bell helped us in that area.

Senator CHAFEE. You had no question but what you had confidence in Judge Bell?

Mr. COCHRAN. Yes, sir.

Senator CHAFEE. In your dealings with him?

Mr. COCHRAN. That is correct.

Senator CHAFEE. I see. Fine. Thank you.

Mr. COCHRAN. Senator Kennedy, I have to leave very shortly. I want to stay as long as possible, but I have a plane to catch at 5:30.

Senator KENNEDY. You've got some time.

We have a number of witnesses here that have come from out of town. We are going to try to make sure they get on as well.

After your testimony and that of Lonnie King, we are going to take those that are here from out of town and the ones from the city of Washington will be moved back.

We have a representative of the Georgia Legislature. The Georgia Legislature is in session at the present time. Evidently they are voting down there.

We will make sure you get on.

Senator SASSER?

Senator SASSER. Mr. Cochran, I want to commend you for coming here today at your own expense. I think that is an act, frankly, of plain good citizenship.

You have stated to this committee, Mr. Cochran, that you are a veteran of many years of civil rights struggle in the State of Georgia.

During the 1950's did you fear for your personal safety at times?

Mr. COCHRAN. Yes, sir. I went to Monroe, Ga. I had to have an escort from Governor Thompson's office at the time.

When the State police got up there and saw the excitement, they left and said they were not going to stay.

I was chased out of Monroe. I took a witness there in this lynching case. I went in the *England* case into Americus, Ga., incidentally, where I had to build a house for two or three people. A woman was accused of something which she did but which was justified.

I have had trouble in many places.

Senator SASSER. Was this in the late 1950's, Mr. Cochran?

Mr. COCHRAN. This was 1946. I will never forget the lynchings in 1946. The others were in the 1950's.

We had what we called a defense fund. I was chairman of that committee. Mr. Yates was the treasurer.

We even helped one of the guys get out of town after he escaped from the chain gang.

We had an underground, almost, at the time.

Senator SASSER. As late as 1958 at the time that Vandiver assumed office, was there any threat of physical retaliation for your civil rights activities?

Mr. COCHRAN. No, sir. It did not come from the Government that way.

Senator SASSER. From the citizens in general who disagreed with you views on civil rights?

Mr. COCHRAN. No. No; this was the climate in Georgia, particularly rural Georgia.

In Atlanta we had licked a lot of things.

The fight in 1948 to get black police was one of the worse things we had, the worse fight we had, to put eight policemen on.

At that time I had to make room for them in the YMCA because they didn't dare meet in the police headquarters. The climate was so bad.

Senator SASSER. Let me ask you this: The threats were made, as I understand it, by the Vandiver administration that they would close

the public schools rather than submit to the Supreme Court's order of desegregation.

In your judgment, were the threats which were made to close the public schools real?

Mr. COCHRAN. Actually, we didn't believe them. We were not going to take any chance anyway. We did not want a direct confrontation at that time for the reasons I have given you. We decided that we would try to bide time.

That is the only way I can put it.

It was at that point that Judge Bell was a very great assistance to us.

Senator SASSER. Judge Bell sent an emissary to see you and you had a series of conferences with him over an extended period of time?

Did Judge Bell tell you that one of the purposes of the Sibley commission or that one of the purposes of John Sibley going into the rural counties of Georgia was to persuade the people to accept the law of the land?

Mr. COCHRAN. He did say it quite in those terms, Senator, but he did say we have to educate the people as to what is going to happen in Georgia—that we were going to eventually have integrated schools.

We needed a little time to educate them.

Senator SASSER. In your judgment, sir, did the Sibley commission perform a useful role in educating the citizens of Georgia?

Mr. COCHRAN. If it had not been for the Sibley commission, we would have had all kinds of trouble in Georgia.

Mr. Sibley went throughout Georgia and, for the first time, got rural Georgians particularly to realize that there was no escape.

When a man of Mr. Sibley's stature makes these statements, people listen. At least they would listen because he was one of the first citizens of Georgia.

We had never been active politically or any other way.

It took a lot of doing, I understand, to get him to do it.

Senator SASSER. I gather there was some—

Mr. COCHRAN. Excuse me, Senator.

Mr. Sibley represented the Trust Co. of Georgia. When you say "Mr. Sibley," you say the Trust Co. of Georgia.

The Trust Co. of Georgia has been paramount in Georgia for years. That represents the business structure of Georgia. It carries tremendous weight.

Senator SASSER. When the Sibley commission made its report, Judge Bell came to you and said that he was disappointed?

Mr. COCHRAN. He was disappointed. He did not have direct control of that. Mr. Sibley is a very independent man, which I know.

While he objected to some of the things, Mr. Sibley said to him: That is the best we can do to get it approved, at least. So they accepted that.

Senator SASSER. Was Mr. Sibley himself disappointed with the report?

Mr. COCHRAN. He was, I understand.

I happen to know him personally. Some of the others did not know him personally, but I knew him personally.

Subsequently, Mr. Sibley set up a foundation that I was related to.

Mr. Sibley was very disappointed with parts of that commission, but it was the best that could be done at the time, Senator.

Senator SASSER. I think that is one of the things we are trying to reach, Mr. Cochran. We are trying to reestablish what the times were in the late 1950's and how Judge Bell reacted to those times. I believe that, if we can establish how an individual reacts to the pressures of a certain time, then we have some criteria upon which to measure what his behavior will be in the future.

Mr. COCHRAN. I would say his strategy was excellent. I would say he kept the so-called black leaders, of which I happened to be one, very modestly, informed. We interpreted that to other people.

In light of today's climate, that may seem very infantile to a lot of people. It was not in those days, Senator.

We had to operate cautiously.

I am not, as one of the witnesses said here, chained in the mind. I have never been chained in the mind.

Senator SASSER. Let me ask you this: Given the temper of the times of 1958 and 1959 in Georgia, did you consider Griffin Bell then to be a conservative, or for segregation, or did you consider him to be in the—

Mr. COCHRAN. I would say he was somewhere in the middle at that time. He certainly knew what was happening was wrong and he didn't want to be a party to it. He had a job to do, but at the same time he took the trouble to inform. That is the strategy in the South. You have to have friends that you can work with in order to keep informed and know what is happening. You have no power. You have very few votes. You are excluded from the primary. You had the county unit system for years. You just did not exist. If you did not have some friends, you would just be lost—not me personally, but the people I am trying to help and represent.

Senator SASSER. Mr. Cochran, did you consider Griffin Bell to be your friend and a friend of your people?

Mr. COCHRAN. In that sense, yes, Senator. Yes, in that sense, but not a close personal friend. I never visited Judge Bell's house. I had lunch with him I guess once.

Senator SASSER. I mean in the sense that he was philosophically attuned to you and sympathetic with your aims.

Mr. COCHRAN. With the aims of the leaders of the black community, yes; not mine particularly.

Senator SASSER. Judge Bell's record in the field of civil rights has been questioned in this hearing and questioned in this room.

Are you comfortable with Judge Bell being the Attorney General of the United States of America, the chief law enforcement officer of this country?

Mr. COCHRAN. Yes, sir. I believe very strongly that we will have a real friend. I think the laws will be observed religiously. I think Judge Bell knows a whole lot more about the South where a lot of these problems are than anyone else in the country. I would trust him implicitly; yes, sir.

Senator SASSER. Thank you, Mr. Cochran.

Senator KENNEDY. Senator Heinz?

Senator HEINZ. Thank you, Mr. Chairman.

Have you had many meetings with Judge Bell since the early 1960's?

Mr. COCHRAN. No, sir, not since he became judge.

I think I had a client once that I was interested in, but I didn't even attend.

Senator HEINZ. You had no conversation—

Mr. COCHRAN. I had no conversation.

I did not contact him about appearing here. I did this because I felt I needed to, even at the expense of being misunderstood.

Mr. HEINZ. I don't think you are being misunderstood.

Let me ask you: Go back to the Sibley commission, how were the people that met with Judge Bell—not the Sibley commission.

Go back to the meetings that you held with Judge Bell. Those were apparently secret meetings.

How were people invited? Who did the inviting? Were there any lawyers present?

Mr. COCHRAN. Judge Walden was chairman of the committee. Judge Walden was chairman of the Negro Voters League, which was a powerful consortium in Atlanta at the time and spread throughout Georgia. Judge Walden was the first black lawyer ever to practice in Georgia. He went through a lot of indignities, but he stood up. He was a vigorous fighter for civil liberties.

He was chairman of the committee. I was the executive secretary. We had a dual secretary. One was Republican and I was the Democratic secretary. We met jointly.

The executive committee, when it came to State matters, was strictly Democratic. We did not invite Republicans because the voters league functioned only as bipartisan group in the city of Atlanta, but we also had a State organization which we kept informed; but we did not invite everybody to the meetings.

Mr. HEINZ. Was it the same group that met with Judge Bell?

Mr. COCHRAN. It was the same.

Senator HEINZ. The Voters League?

Mr. COCHRAN. Yes.

Senator HEINZ. It did include some lawyers. You mentioned the Judge.

Mr. COCHRAN. Yes. It had two lawyers, I think.

Senator HEINZ. One of the questions that we need to get to the bottom of is: Since the strategy of the Vandiver administration seemed to be one of delay, through massive resistance, insofar as desegregation and schools was concerned, would it not seem to you that Judge Bell's request for more time served Governor Vandiver's purposes in his effort to get to the end of his term without presiding over Georgia's integration?

How can you be sure, in other words, that what Judge Bell was doing was not really just serving the Governor's purpose?

Mr. COCHRAN. Delaying tactics and so forth?

Senator HEINZ. How can you be sure?

Mr. COCHRAN. I have a masters in counseling and guidance. I know people. I have worked with them. I have worked with thousands, including all types of people, judging people's motives and direction.

I can only give you my experienced knowledge in this, that I know people's motives.

I have never sold out to anybody. I have never taken a dime for anything.

I have worked for many candidates for public election, including some distinguished Senators on this committee. I have never violated any trust or taken money for anything.

That is the record I have in Georgia.

Nobody can buy Warren Cochran. They have tried, but they can't.

I know people. I have but one object. That is to serve the people of Georgia. I serve blacks and whites, but mostly black.

When I came to a segregated State, I knew what I was doing.

I happened to be born in New York State and was educated at the University of New York, Columbia University, where I have a master's. I came to Georgia deliberately because I found the hypocrisy of New York State as bad as it was.

I get very riled, Senator, sometimes when they talk about what has happened in the South. I know what went on in both sections of the country. It is the pot calling the kettle black many times.

MR. HEINZ. I suppose the question I am really driving at is: Would you say that Judge Bell's interests, his goals, his motivations were——

MR. COCHRAN. Honest?

Senator HEINZ. Not only honest. That is not just the question I am really asking you. Were they substantially identical to your own and to the groups?

MR. COCHRAN. Yes; we would not have continued to work with him if we did not think they were.

Senator HEINZ. Insofar as integration was concerned?

MR. COCHRAN. Yes.

If they want to accuse us of delay, yes, we had to delay. The times called for it. We couldn't turn it overnight. We were afraid of confrontation. We were afraid of a lot of things. We were afraid of chaos.

If you can work out a situation through compromise without chaos and confusion, you do it. It may take time, but eventually you do it so long as you do not compromise basic principles.

That is the theory we have had to work on. That was the tone in which Griffin Bell came to us. We accepted it on that basis.

I know it was honest and sincere.

Senator HEINZ. Mr. Cochran, thank you very much.

MR. COCHRAN. Thank you.

Senator RIEGLE. If I may, very briefly—I know you have a plane to catch and you are leaving. I just want to say two things.

One, you are very persuasive in your point when you were saying that the support you have out in the community today is such that maybe you could run and could get elected for Congress.

MR. COCHRAN. Don't quote me on that.

Senator RIEGLE. It is part of the record.

I gather that you have not yet been invited to join the Piedmont Club?

MR. COCHRAN. I have been there many times. I have had luncheons there. I have never raised the question. I don't have the money anyway. It costs \$500.

Senator RIEGLE. The thing I wanted to make clear, because I think it strengthens your own case here, is that I take it that you had no con-

versations with either Mr. Bell or anybody on his staff in advance of this session here?

Mr. COCHRAN. After I made a statement to the papers in Atlanta, Mr. Adamson did call me and said the hearings were being held. I said: Well, I would like to attend.

That was the extent of it, but nobody told me and nobody said you ought to come and so forth.

Senator RIEGLE. There was no discussion with anybody at all about—looking back in time at that period as to what took place or what have you? There were no conversations between you and anybody else along that line?

Mr. COCHRAN. Nobody knew anything about it.

Senator RIEGLE. I just want to make sure that is on the record today.

Mr. COCHRAN. The only person who would know would be Judge Bell. I have seen him only once or twice since I have been here. We haven't discussed that at all. We discussed some other things, but I have never discussed my testimony.

His administrative assistant asked me if I was going to write it and I said no. I said I have it in my mind pretty definite. I know exactly what I am going to say and I am going to tell it like it is, as the boys say.

Senator RIEGLE. Again, I thank you for coming.

Senator MATHIAS. Mr. Chairman, I have just one brief, wrap-up question.

Senator KENNEDY. He is just about to miss that last plane for Atlanta.

Senator MATHIAS. Do you know Fred Calhoun?

Mr. COCHRAN. Who?

Senator MATHIAS. Fred Calhoun.

Mr. COCHRAN. John Calhoun?

Senator MATHIAS. No; Fred Calhoun.

Mr. COCHRAN. I am sorry. Would you tell me a little more?

Senator MATHIAS. He was the complainant on behalf of his daughter Vivian in the case of *Calhoun v. Latimer*. It is one of the Atlanta school cases.

Mr. COCHRAN. I think you have the name wrong. I think it is John Calhoun.

Senator MATHIAS. Well, he is listed in the Federal court reporter as Fred.

Mr. COCHRAN. John Calhoun was a member of our committee.

Senator MATHIAS. He was?

Mr. COCHRAN. He is a big Republican. I do not agree with him politically, but—

[Laughter.]

Senator MATHIAS. You mean he was there—

Mr. COCHRAN. He was present at many of the sessions; yes, sir.

Senator MATHIAS. With Judge Bell?

Mr. COCHRAN. Yes, sir.

Senator MATHIAS. And you think he is the one who is involved in this school—

Mr. COCHRAN. I think so. I had lunch with him at the Marriott just last week. We were talking about it.

I said, "Are you going to make a statement?" He said, "No; you go ahead and make it." He said, "I am a Republican and I don't think I should." I said, "Well, I will make it."

Senator MATHIAS. This case was actually already pending at the time, I guess, that those conversations took place because it was filed in January.

Mr. COCHRAN. It was pending, yes.

Senator MATHIAS. Do you have a list of the people who were at those meetings? Do you have any records of the committee?

Mr. COCHRAN. I told you Judge Walden kept all the records. The headquarters was in his office, which was right next door to my building.

I was out of town at the time Judge Walden died. I came back for his funeral. I was serving in another capacity on leave.

When I tried later to get the record of the voters league, they had all been destroyed.

It was Judge Walden, A. T. Walden, 28 Butler Street, right next door to my office.

Senator MATHIAS. Thank you so much, Mr. Cochran.

Catch that plane now.

Mr. COCHRAN. Thank you very much, Senator.

Am I excused?

Senator KENNEDY. You are excused. We thank you for coming. We value your testimony. I apologize that I was not here in the early part. We wish you the best of luck on the expressway.

Mr. COCHRAN. Thank you very much, Senator.

May I express thanks to Lonnie King for allowing me to do this because I have taken more time than I should have taken, but I did want to say exactly what I said.

Thank you very much.

Senator KENNEDY. Thank you very much.

Mr. King? Mr. Lonnie King, former president of the Atlanta chapter of the NAACP. We look forward to your testimony.

Mr. KING. Thank you very much.

Senator KENNEDY. I hope that in your testimony—there were some references made yesterday about a particular case in which Judge Bell was involved which I'm sure you are familiar with. I'd hope that you would be prepared to comment on that as well.

Mr. KING. Thank you.

TESTIMONY OF LONNIE KING, JR., FORMER PRESIDENT, ATLANTA CHAPTER, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Mr. KING. Mr. Chairman, members of the committee, my name is Lonnie C. King, Jr. of Atlanta, Ga. I want to say at the outset that I paid my own way here. I've stayed at the Regency Hotel because it's very nearby. I paid my own way over there.

I have stayed, now going into the third day, because of something that I really believe in. I was not going to testify. In fact, I thought it was moving along very, very well until I read in the newspaper that Judge Bell was being attacked because of his involvement in the Atlanta school plan.

That bothered me a great deal because, my recollection of involvement in that was that, I was the president of the branch at that time and from what I could determine from the newspaper accounts it was clear to me that Judge Bell was going to get a bum rap on that one issue.

So I thought about it for a while and I decided that I would come and testify. Judge Bell did not call me to ask me to come and testify, but I decided that I would come and testify.

As I go through my testimony today, I think you will understand as I get further on into it. It relates to something that happened about 3, 3 $\frac{1}{2}$ years ago.

Let me say to you that I speak not only for myself, but I think I speak for a sizable number of black citizens of the State of Georgia in urging Judge Bell's confirmation. Now I don't want you to believe that I'm trying to say that I speak for every black person in Georgia or every black person in Atlanta or every black person on my street, but I am speaking for a few people who I have talked to who are in positions of influence and who are not in positions of influence in Atlanta.

The overwhelming opinion that I have gotten from these people who have asked me to come and testify as I have discussed it is that they believe that—and I, too, believe that—he has the requisite background, intellect, integrity and commitment to be a superb Attorney General.

Now, before I get too deeply involved in my statement of support for Judge Bell I want to request the committee's indulgence as I set forth my own involvement in the fight for equal opportunity and justice in America.

I don't enjoy a national or international reputation in civil rights. I've never appeared before this committee before to either fight for someone's nomination or against someone's nomination.

But I have been involved in civil rights since 1960 while I was a student at Morehouse College and I guess you could say that I have been in the eye of the storm in civil rights.

I was the chairman of the Committee on Appeal for Human Rights which led to the desegregation of all lunch counters in Atlanta, restaurants, movie theaters, hotels and other places of public accommodation.

Now that wasn't exactly an easy feat. That was 1960, 1961, and I know we've been talking a great deal about what happened in 1958, 1959, 1960, 1961.

On May 17, 1960, I led 4,000 students past the Capitol of Georgia and Governor Ernest Vandiver heard that I was coming—first of all, let me say that Gov. Ernest Vandiver made it very clear to the press which your staff can check out that I and the people who were with me must have been educated in Moscow or something.

It appeared as though he just discovered that there was an AU center in Atlanta that had 4,000 black students there trying to get a higher education, but he called a hundred-plus State troopers with billie clubs and they rung the State capitol.

They lined the entire State capitol on that day daring us to come by it but I led 4,000 people past that capitol that day, on May 17, 1960. I did not know whether or not I was going to make it back but

I was determined that we were going to face the segregationists in Georgia at that time.

We moved on and we integrated the rest of the city over the next 18 months but while we were working there were people working in several other places in the South, North Carolina, where it all started, Virginia, Maryland. Mr. Clarence Mitchell spoke yesterday. His son and I marched on the picket lines in the South. His son was one of the persons who helped us set up the Student Nonviolent Coordinating Committee. We went and convinced Martin King to call an Easter meeting in Raleigh, N.C. in 1960.

The major reason for our trying to set up SNCC or something called SNCC was because we knew that the racists that we were battling were organized and we just did not believe that we could win a quick victory in an uncoordinated fashion so we decided to organize because our opposition was organized.

I was elected to its first board of directors and served to map strategy on a coordinated thrust on segregation. I think the rest is history in terms of what SNCC did and what many of us did.

Now, we didn't have too many lawyers going before us during those days arguing our constitutional rights. They normally came to argue our constitutional rights after we were in jail and they were coming to bail us out.

When we faced these people, we didn't have—even the police were not on our side. I never will forget the time in 1960 when I led a couple of hundred students around Richards Department Store.

If you've ever been to Atlanta, Ga., you know about Richards Department Store. There was an article in the newspaper which said that the Ku Klux Klan was coming to town and that we are not to be there when they arrived that Saturday.

My position was that we had to face the Klan. If you'll look at the New York Times and a number of other articles during that period of time, you will see an interesting picture, or an interesting article written by Claude Sitten.

That article dealt with the fact that the young black students who were in college at that time marched around Richards on one side and the Klan was on the other side. The net effect of our protest was to force—was to keep all people out—black and white.

The blacks didn't come because they were supporting our effort. The whites didn't come because they were afraid of trouble. So consequently we had a 100 percent boycott going on at that point.

I can go on and on mentioning a number of other kinds of things where we faced howling mobs. I went over into the west end of Atlanta. We decided that we'd move on the grocery stores down there.

There's a store called Mann Bros. in west end and I decided that I would take the group over there and break down Mann Bros. It had 100 percent black patronage. Not a single black was hired except as a janitor.

We moved in, set up our picket lines, and if any of you know anything at all about west end Atlanta in 1960 you know that that was a part of the haven where the Klan was.

On my second Saturday out there, I was surrounded by at least 200 or 300 white people who took the position that I had to die. I

did not run from those white people. None of my students who were with me ran from those white people.

We faced them and we integrated Mann Bros. Now, they threw some things on me. I had to go to the hospital and all those kind of things, but nevertheless we really believed that we had to break down what was going on.

I left Atlanta in 1961, came to Washington, D.C., and stayed here for a number of years. I won't get too involved in the things that I did here but I served as president of the Young Democrats of Washington, D.C., for two terms, dealt quite a bit with Mr. Joe Rauh, know him extremely well, remember when he came to southeast Washington, D.C., and was very upset about the fact that we were trying to have some participatory election in southeast Washington, D.C., for people who would serve in the Democratic Party in the District of Columbia.

I won't get too involved in that but I'll just say that my involvement is a little bit deeper than just a Johnny-Come-Lately, whether in the Democratic Party or whether in the civil rights movement.

But I went back to Atlanta in 1968. In 1969, I contracted three illnesses at one time. I won't go into what they were but they were very serious illnesses and the doctor told my wife that I wasn't going to make it, my mother the same thing.

But then they gave me some sort of wonder drug and I recovered but as I was lying there on my sickbed I got a chance to do something that I hadn't done in years, which was watch television, for 21 days.

I saw the "Today in Georgia" show for about 15 of those days. They were listing a young black woman in Atlanta who has now married Mr. Hank Aaron, Billie Aaron. They were listing her as the cohost but I watched for almost 15 days and I don't think she was on camera 5 minutes on an hour show per day.

Ironically enough at the same time the Federal Communications Commission was promulgating some guidelines on equal opportunity in employment and on making programing more relevant to the black community, its tastes, its needs, and its desires.

By that time, I had been elected president of the Atlanta branch of the NAACP so I called my executive director, Mr. Morris Dillard, and instructed him to get those guidelines from the FCC and let's do something about the fact that there are no blacks on TV in Atlanta, Ga., in fact very few blacks on TV in America.

When I got up out of my sickbed I called together a coalition of community people and we formed what was called the Community Coalition on Broadcasting. Within a matter of a few months, we got blacks instantly on television.

You have one lady here in Washington, D.C. who is anchoring your evening news, Miss J. C. Haywood, who got her job through this coalition effort there in Atlanta, Ga. You have another lady who is in this room now who received her job working for Cox Broadcasting Co. as a result of this effort.

I can go on and on. You have a number of other people who are in this city right now who started——

Senator KENNEDY. Why don't we take you at your word for it. I think you've established your credentials.

Mr. KING. I'm going to move on.

Nearly all 50 States, Senator Kennedy and others members of this committee, adopted what we did in Atlanta with dramatic results. I think if you look on your television sets at night you can see.

But let me go back to those early years in the movement that appear to be very, very critical in this particular situation and I'll spend just a brief period of time on it and then come into the contemporary time.

I've already said that we took our lives into our hands. It was not safe and it was not fashionable. It's from this background that I come today to urge this committee to confirm Judge Bell.

I know that some of his rulings—and we've talked about them here today and yesterday and other days—may not be ones that I would have made under similar circumstances, but I have confidence that Judge Bell will make his staunchest critics feel proud of his performance with respect to black judges in the South, equal opportunity in employment, housing, and so forth.

There has been a substantial amount of criticism focused on Judge Bell's alleged part in the massive resistance to the desegregation movement in the South.

Members of the committee, I honestly believe that many people are applying 1977 standards of conduct and morality to 1959 conditions and circumstances.

What was the racial climate not only in Georgia but throughout the South in the 1950's and early 1960's?

The NAACP was thrown out of Alabama on June 1, 1956, and White Citizens' Councils were springing up all over the South. Mass racial hysteria was the rule, rather than the exception.

The history of that era has too many cases of killings, floggings, and so forth that were inflicted on black people who had the audacity to act as if the Bill of Rights included them, too.

On the other hand, any white person who openly advocated an accommodation of the races was instantly called a nigger lover and, in many cases, run out of town. Any person in this room who is at least 35 years of age can attest to the veracity of my statements.

Again, I say to the committee, in a climate such as the one that I have described, could Judge Bell, you, or any other white person have openly or notoriously advocated integration?

Mr. Cochrane has already testified about what the pillars of the black community felt at that time so I won't get into that.

Let me come to contemporary times. During 1972, I had the opportunity to hear Judge Bell address a black and white citizens' group in Atlanta on the issue of school desegregation. His message to that group was unmistakably clear; school desegregation was an established fact of life, the law of the land, and they had best prepare for it because it was here to stay.

Now, I was a little bit taken back by that because I really didn't know Judge Bell until that meeting but he made, in my opinion, a sterling civil rights speech, one which I probably would have made if I had been invited to make the speech.

There are many who criticize Judge Bell for his past civil rights record and I respect their right and obligation to do so, but I must say in all candor that I know the man, having met him in 1972, 1973, and I believe that he will make an outstanding Attorney General who will enforce the law evenhandedly for all Americans.

Mr. Mathias, are you chairman now?

Senator MATHIAS. I'm not the chairman, but—

Mr. KING. There were a number of things that were brought up yesterday that I really want to deal with for a few moments. I don't intend to take 3 hours of this committee's time or 2 hours or anything like that because there are a lot of people who have been here and they want to come forward to say something.

I don't think it's going to take a long time to say some positive kinds of things if you really have some positive things to say but let me say a little bit about what really bothers me and what kind of prompted me to come up here.

There used to be a time when it was absolutely necessary and essential, if you were black in America, that all the ideas and all the strategies and all the lawyers come from New York City or Washington, D.C. to the ignorant South to save those heathen brothers.

That is not the case today. In another forum I will deal with that particular issue later, but what bothers me is that I have examined and listened very patiently to people who have come before me attacking Judge Bell's nomination and I find many of them trying to attack the personality and the character of people who have said, "I am willing to stand up for the man."

Someone said yesterday that the true test of a person is his ability to stand up for what he believes against great odds.

For me to oppose the national office of the NAACP, its staff members primarily, is almost like my trying to oppose my mother.

It has an illustrious record. There is no doubt about that. But the NAACP did not do it all. There were some other folks who were out here doing a few things, too, to help bring about some changes for black people in America.

I happened to have been one of these persons.

My involvement with the NAACP was as a volunteer. I was never a paid staff member. All I did was raise between \$30,000 and \$60,000 per year for 5 years for the NAACP to support it, nationally as well as locally.

All I have done is that I have been a subscribing life member for years now. I have continued my life membership, paid \$50 on January 1 at the Emancipation Day. I have instituted a life membership for my wife. My company is a subscribing life member.

When I heard that the NAACP was about to not raise that \$1 million I raised \$1,250 in 1 hour and sent it off to the NAACP and help them on that crisis.

Now, I did all this. Senator Mathais and other members of this committee, even after they had, quote, kicked me out, unquote, because of the Atlanta Plain.

Let's talk a little bit about some other people and some other things. Mr. Clarence Mitchell has been my idol in civil rights and he didn't know that—

Senator CHAFEE. Mr. King, one quick question. When you said they kicked you out because of the Atlanta Plain—

Mr. KING. I'm coming into that right now.

Senator CHAFEE. Oh, I see.

Mr. KING. Mr. Clarence Mitchell—and I was going to say that he probably doesn't know this until I'm saying it right now—has been my idol in civil rights since 1959, 1960, when I first met his son.

I've always known him to be passionate, mindful of the other person's point of view, willing to listen. I just don't believe that Mr. Mitchell knows all the facts surrounding what happened in Atlanta, Ga. because I think if he knew all the facts of what happened in Atlanta, Ga. he would publicly come forward and give me an apology.

Let's get to the Atlanta Plain. The Atlanta Public School, gentlemen, and I enter this in the record, has been trending black since 1952. This suit that we've been talking about, *Calhoun v. Cook*, was filed on January 11, 1958.

Now, prior to that, 100 black parents in 1957 wrote a letter, a petition to the school board asking them to live up to the *Brown v. Board of Education*.

Senator MATHIAS. Senator Riegle is now the chairman. We are in the minority in this case.

Senator RIEGLE. I know it's a remarkable ascension. It just shows you what you can do around here if you work hard.

Mr. KING. Senator Riegle, the point is the schools have been trending black since 1952 and the case was filed in 1958. At the time I had it really kind of dumped in my lap in 1972, 1973, the thing had been in court for almost 15 years.

Now, Judge Bell, without my knowledge, had been invited to an Action Forum meeting to discuss school desegregation and the status of school desegregation in the South. It seems to me that many of the whites and the blacks on that committee were concerned about what was going to happen in Atlanta, Ga.

Judge Bell came to that meeting and, as I said earlier, he merely set forth what the law of the land was for them at that time.

Now, a man named Mills Lane who was the president and chairman of the board of the C. & S. Bank and a man named William Calloway—Lane is white, Calloway is black—at the end of these discussions said to me—and I was president of the NAACP—and they said to a man named Ben Landingham who was a school board member: "What are we going to do about this mess? We've been arguing this case in court for 14, 15 years. How much money have we spent?"

Someone said, "In legal fees, it must be somewhere near \$1 million."

They got very upset about that as people would get upset because what was happening is that black people were paying twice. They were paying and sending money to the NAACP Legal Defense Fund to argue the plaintiff's side of the case but they were also paying as taxpayers in Atlanta to argue the defendant's side of the case.

So Calloway, the black man, and Lane said, "Well, can we settle this case?" I took the position that I wasn't sure that we could settle the case because the case was in court and it was handled by the Legal Defense Fund, but I was president of the branch and the branch did bring the suit.

I also made it very clear that I was not coming to any meetings without my lawyers, simple as that. I agreed along with the school board members to sit down with the school board, since they were plaintiffs and defendants, to see whether or not there was a commonality of interest or any grounds.

What was the dilemma? What were some of the questions that went through my mind as we tried to put this whole thing together?

In 1957, 1958, when the suit was filed, the school system was 38-percent black: 56,000 whites, 35,000 blacks. At the time that the issue

came up and was put in my lap, there were 15,000 white left—71,000 blacks or 81.5 percent—so the key question then became one of: What do you do?

Do you bus those 15,000 whites all over town to all the black schools or just what do you do?

Senator MATHIAS. Just so I get this clear, you say that you would not go to any meeting without your lawyers?

Mr. KING. That's right, and I will go into that a little later.

We got Mr. Stoley to develop a plan. By we I mean collectively the NAACP Defense Fund and the Atlanta branch. His plan brought back busing of about 35,000 students. There was a tremendous amount of uproar in the community.

So what I decided to do was to hold a series of hearings around Atlanta both in the black and the white communities and I went to all sections. But one thing really stuck out in my mind as I was talking in the southwest section of Atlanta, Ga.: One woman got up and she said to me,

Mr. King, the plan that you all have proposed will bus my child from a school that is roughly 85 percent black now, which is brand new, to another school across town that's going to be 85 percent black by your plan when he gets there.

She said:

Would you tell me why I have to get up an hour earlier to bus my child from an 85 percent school on one side of town to an 85 percent school on the other side of town and the other school is an old dilapidated school?

I really didn't have an answer, for that, but that troubled me.

What I did not say to you gentlemen earlier was that I also worked for the Federal Government once, in HEW, in title VI, responsible for school desegregation.

So I kind of started to go back and look at some of my records and look at what was happening and talk to some of my friends at HEW.

What was happening in education in Atlanta, Ga.—no, I'm sorry, in Georgia and throughout the South—was that the black principal, the black counselors, the black administrators were disappearing.

The system in the South was such, and Georgia was no different, that if you were black and you wanted to go to a graduate school, you could go to NYU, Harvard, or Yale.

You just couldn't go to the university, and they paid your way, a part of it, but when we came down to the final desegregation and the application of title VI and the enforcement of these court decrees, in almost every instance we found that the superbly trained black teacher, black principal who was educated in the East was becoming the assistant principal under a white principal who had been educated at the university system. That happened all over the south and it probably still is happening today.

In Georgia now, outside of the State, there are very, very few black principals. So what did we do? I decided that what was happening was that the NAACP was arguing cases, spending a lot of money over 10, 15 years winning the metaphysical court decision.

Yes, we have won and we have enforced the court decree, and they would beat that white superintendent and that white school board down and then they would turn the school system right back over to the same person that they were fighting for 15 years in court.

The black parents in Atlanta were up in arms. At one school, North Side High School—we were busing kids before this plan into North Side High School—the bus driver would deliberately bring those kids to school late.

If they got, I think it was, five demerits they were pulling those kids out of school. Those black parents had no redress at all in that white administration.

It was clear to me that the definition of a unitary school system included more than just how many black kids were in formally white schools and vice versa; it included more than how many white teachers were in black schools and vice versa; and it also had to include the administration because they're the ones who have to decide what the attendance zones are, they're the ones who decide what schools shall be paired, they're the ones who decide who is going to be RIF'ed.

When you get down to reduction in force, they're the ones who decide what that objective criteria happens to be.

So I looked at this whole thing and I looked at Washington D.C. I said, Well, gee whiz, in the shadow of the Supreme Court, in the presence of the U.S. Senate and the seat of Government, we have about a 95 percent black school system and they haven't solved the problem there of school desegregation and with Atlanta being 82 percent, we almost have the same situation.

So I felt that it made a lot more sense, since we may go Metro one day, for black people to get the control of a one hundred and some million dollar institution, rather than turn it back over to the same people that we had been battling.

Gentlemen of this committee, if I made any mistake at all it was not doing it earlier because it just seems to me that we had allowed the school system in Atlanta, Ga., when I was not president of that branch, to get away with murder and I just brought it to an end and decided that I'd move forward on it.

Now, why do we have the NAACP battling us on this thing? They battled me in 1973. They put me out.

The reason I'm talking about it so much, Senator Mathias, is because Judge Bell has been accused of masterminding the plan and the man did not do that. That is an absolute prevarication.

Senator MATHIAS. I understand that. I just wanted to ask you a question. You said you organized a series of meetings?

Mr. KING. Yes.

Senator MATHIAS. Did that series of meetings have a name?

Mr. KING. No. No, I assumed the power, Senator Mathias, by virtue of the fact that I was chairman of NAACP, president, to call these meetings.

What I basically did was get in touch with a variety of principals and PTA types in a certain section of town.

Senator MATHIAS. These were under your sponsorship?

Mr. KING. Under my sponsorship.

Senator MATHIAS. OK. That's fine.

Mr. KING. It was unusual but I did it.

I wanted to say that when we did sit down with that school board and talk about school desegregation, my first demand was that the racist white school superintendent had to be fired and that we wouldn't

even talk if we couldn't do that. You can imagine how that went over, but that finally happened.

I drew that plan up in the home, in many instances, of the regional director of the NAACP. A part of that school plan, the teacher assignment section, was drafted by the lawyer from the legal defense fund, Ms. Elizabeth Renstar. She drafted the plan.

Before I agreed to anything I called Jack Greenburg, I called Howard Moore, and we met at the Atlanta Hilton. We got all kinds of concurrence.

When we were in the Trust Company of Georgia—it keeps coming up—the Trust Company of Georgia board room working out the final details wherein blacks would get 50 percent of all the jobs and the school desegregation, wherein they had 3 and 4 percent blacks in them, would have a minimum of 30 percent black, I called the legal defense fund and got their permission to move forward; called the NAACP.

Now, after we went to court in the middle of February and agreed to all these plans I got a call from Mr. Roy Wilkins who congratulated me on a job well done. He issued a statement to the New York Times during the next day or two.

I felt very good. I thought we had done an outstanding job. Everybody apparently was happy.

Then I got a telegram a day or two later telling me that I had been suspended. That, I couldn't understand.

Senator MATHIAS. But the meeting had taken place by that time?

Mr. KING. The meeting of the Action Forum? The meeting that Judge Bell was in?

Senator MATHIAS. You said you had had a meeting with the school board.

Mr. KING. Yes. Oh yes. That was a series of meetings.

Senator MATHIAS. You were accompanied by your lawyer?

Mr. KING. Yes, not only my lawyer. In fact, if you will look at the *Calhoun v. Cook* citation, you will see a battery of lawyers.

Senator Mathias, the spectators could hardly get into the courtroom because there were so many lawyers.

Senator MATHIAS. Fine. I just wanted to make sure the record is clear on this.

Mr. KING. Yes; we had Elizabeth Renstar there representing the Legal Defense Fund—

Senator MATHIAS. I'll take your word for it.

Mr. KING. OK. All right.

Senator MATHIAS. It's all part of the record.

Mr. KING. OK. Anyway, Mr. Wilkins and company suspended me so I went to New York, had a meeting with the national board of directors, not board of directors but board chairmen and key members of the board and staff and I presented the Atlanta case.

At least one of the gentlemen who sat here yesterday was in that meeting.

When we got to the bottom line, I said: What do you do with a school system that is 82 percent black and was roughly 38 percent black at the time that you filed the suit? What do you do when the facts have changed?

Gentlemen of this committee, they had no answer then and they have no answer today as to what to do with Washington, D.C., or Atlanta, Ga., or what have you.

One gentleman in there said, well, let's go metro. I said, but metro is not the law of the land at this point. If it is, we'll do it. But they wanted me to hold up and go metro. I said, no, I will not do that.

So the rest is history, you know. We had all the confrontations and what have you but I say to this committee that if I was wrong when I got the telegram from Mr. Wilkins suspending me, then I was wrong when I got the telephone call congratulating me.

Once we had gone to Federal court with a plan that was developed in concert with my friends in this movement, I was not about to go back to Federal court and ask them to change.

The other thing that I think has really upset some people is the fact that I'm probably the only president in this history of this country in the NAACP who has ever fired the lawyers.

Now I fired them and I fired them because they tried to hold meetings and kick my education director out of meetings and my executive director. That is an established fact. Dr. Wylie Boltman is right here in Washington, D.C. They kicked him out of the meetings. I was in Puerto Rico and they called me.

I went to these nine original plaintiffs and I got their power of attorney and I fired them and I don't apologize for it now. I didn't apologize for it then.

Let me conclude by telling you that I believe that Judge Bell on the Atlanta plan is getting a "bum rap." I cannot speak to all his 600 cases. It would seem to me however that if Judge Bell ruled on 600 civil rights cases, then somebody ought to be willing to come in here and say: One-third of those cases were bad or two-thirds of them were bad or something.

I don't know what the case is. All I know is that in my dealings with him I found the man to be honorable, to uphold the law, and I come to ask you to confirm his nomination.

I stand ready for your questions.

Senator MATHIAS. Let me say that if there was any doubt about our having a chairman before, we have one now.

Chairman EASTLAND. Are there any questions?

Senator MATHIAS. Yes; Mr. Chairman.

Mr. King, very briefly what you have been telling us is that this is the story of the Atlanta plan and that it was not Judge Bell's plan, it was your plan?

Mr. KING. I'm the one that got put out of NAACP on this plan. Judge Bell merely spoke to an action forum meeting. All that man said in that meeting was that the law basically had to be upheld.

Now, someone, I don't recall who, raised the issue about lawyers. Bell did make this comment, he said: Well, you know, lawyers often-times cause more problems than they solve. That's essentially what the man said.

But in terms of someone saying that we kept our lawyers out of meetings, that's an absolute prevarication. We did not do that.

Senator MATHIAS. And you didn't hear him issue any call to come to a meeting and leave your lawyers out?

Mr. KING. No. I did not hear that. If he said it—I think we can get other people who were in that meeting to come here——

Senator MATHIAS. And your testimony is that in that speech he did not lay out a formula or lay out a scheme or lay out a plan?

Mr. KING. No. No; in fact the idea for administrative desegregation was my idea. I don't know whether or not Judge Bell would have proposed that we fire the white superintendent who was an institution in Atlanta. I just don't know whether he would have done that.

That was my idea and I would not sit down and talk about anything in terms of school desegregation until they agreed to fire him.

Senator MATHIAS. There is one last thing. Mr. King, on page three of your prepared statement there was a paragraph which you didn't read referring to people who are still alive who had some recollection of the massive resistance era and said that they considered that Judge Bell was a flaming liberal.

Mr. KING. I got that from Mr. John Calhoun who was the president of the branch at the time that the suit was filed.

I wanted to be as prepared as possible, Senator, when I came here because I was in the U.S. Navy for a while and was not in Georgia during the middle 1950's. I came back in 1957 and was very deep in my studies in 1958.

I called Mr. Calhoun. You have to understand, the man who was sitting here, Mr. Warren Cochrane, was at that time the Negro boss—I guess that was the word they were using then—in Atlanta, Ga., if not in the whole State.

He was kind of the executive director of a council of blacks who ran everything. I thought I'd call some of these people who were still alive and just ask them, would you give me very candidly your opinion of Judge Bell?

Mr. John C. Calhoun told me—he is a city councilman in Atlanta now, incidentally—he told me that he'd be willing to come and testify if necessary.

Senator MATHIAS. Could you tell us, is there any relationship between the Frank Calhoun who is the complainant in this case, the father of Vivian Calhoun, and John Calhoun?

Mr. KING. Vivian Calhoun is his daughter, Senator Mathias, and I don't know what the imperfection in the record happens to be. Mr. Calhoun has two children, one John Junior who's in the United States——

Senator MATHIAS. But the Calhoun who is carried in the Federal Reporter as the complainant in the Calhoun case is the same Calhoun that Mr. Cochrane was talking about?

Mr. KING. Yes.

Senator MATHIAS. Thank you.

Chairman EASTLAND. Are there any questions?

Senator CHAFFEE. Mr. King, I just want to get the relationships between you and—first of all, that's a very fine statement. We appreciate it.

When you were working on this Atlanta plan, how closely did you work with Judge Bell?

Mr. KING. I did not. That is why I thought the man was getting a "bum rap," if I may just use that colloquialism here. Judge Bell spoke at that one meeting that I attended which was an action forum

meeting but I was the person along with my education committee who was really calling the action in terms of what was going to happen from the plaintiff's side—not Judge Bell.

Now, I don't know what Judge Bell may have done to talk to the school board, you know. It was 70 percent white. You'd probably have to get them to come and talk about that, but he didn't talk to me.

Senator CHAFEE. So you agreed, but all this was in connection with this *Calhoun* against *Lattimer* case?

Mr. KING. Well, it's *Calhoun* against *Cook*, I believe, and I think *Lattimer* got involved—there was more than one case. There were probably some intervenors, I believe, later who came in in the middle 1960's.

Lattimer was the school board lawyer, I believe, and *Cook*, I believe, was school superintendent, I think you got them all kind of tied in there together but it's really under the broad category, *Calhoun* against *Cook*.

Senator MATHIAS. It's the same *Calhoun*?

Mr. KING. It's the same *Calhoun*, though.

Senator CHAFEE. In any event, this was the case that had been going since 1958, I think you said?

Mr. KING. Right.

Senator CHAFEE. And this was, now we're talking about 1972, was it?

Mr. KING. It was 1972, early 1973.

Senator CHAFEE. So you were trying to get this thing disposed of. But Judge Bell, who was on the circuit court, did he come and meet with you? You only had this one meeting that you talked about?

Mr. KING. Yes; I don't know who invited Judge Bell to that meeting. I would presume that Mr. Calloway, who was the black cochairman along with Mr. Lane, must have invited him, who was white.

I had nothing to do with the agenda for those meetings. I just attended them and participated in them.

I've got to say something else, too, while we are at it, Senator. We've all talked about this Atlanta plan and you have been let to believe that it was hatched in some very mysterious way which denied some people their basic constitutional rights.

Now it just seems to me that in a country of laws we all assume that the courts are the final determiners of what is constitutional and what is not.

That plan that we developed in Atlanta, Ga., was not only approved by the district court—and Judge Bell was not one of its members—but it was also approved by the Fifth Circuit Court of Appeals by a three judge panel, Judge Wisdom, Judge Thornbury, and Judge Clark.

Now those three gentlemen approved this plan and there are some who say that it is the most liberal court in America, even more liberal than the Supreme Court, so whatever the misconceptions or the ill-conceptions of that plan are, they have been sanctioned by the courts and it's not just *Lonnie King* who put it together.

It is what is now the law of the land insofar as Atlanta, Ga., is concerned.

Senator CHAFEE. And that is the plan that the schools in Atlanta are presently operating under?

Mr. KING. It's been adopted by the Fifth Circuit Court of Appeals. I presumed that they looked at it and tested its constitutionality and what have you.

Senator CHAFEE. Thank you.

Chairman EASTLAND. Senator Riegle?

Senator RIEGLE. Yes; thank you, Mr. Chairman.

I want to make sure that I understand correctly the meeting that Judge Bell attended. Did I understand you to say that was in 1973?

Mr. KING. It probably was 1972, early 1973. It was the latter part of 1972 or the first part of 1973. I really couldn't—

Senator RIEGLE. And where was that held? Do you recall offhand?

Mr. KING. That meeting was at the C & S Bank.

Senator RIEGLE. And how many people were there, roughly, would you say?

Mr. KING. Roughly 20. Now this is the action forum which has a bi-racial membership of approximately 10 or 12 blacks, 10 or 12 whites.

Senator RIEGLE. I see. And you say you were not the one responsible for having invited Judge Bell?

Mr. KING. We have an agenda committee that determines what the subject is going to be and who the particular speaker is going to be.

Senator RIEGLE. But he was the speaker that night?

Mr. KING. He was, that Saturday.

Senator RIEGLE. I see; and how long did he speak, would you guess?

Mr. KING. An hour, maybe. He made an opening exposition as I recall it, and he set forth the Supreme Court decision on a variety of issues from *Brown* up to the present day. If I remember correctly, he said to the people in there, black and white, that they had been remiss in their responsibilities.

This case should have been out of the way a long time ago but that they had all kinds of delays and they ought to face up to it.

Now he said that and it really surprised me for him to come off so straightforward on it. I didn't know him before then.

Senator RIEGLE. You say the racial makeup of the room was about half and half?

Mr. KING. It was about 50/50, right.

Senator RIEGLE. And who were the whites involved?

Mr. KING. OK. In that meeting you had Mills Lane who was the chairman of the C & S Bank; you had Allen Harden; you had Billie Sern, who is with Trust Company of Georgia; Allen Harden is the president of the chamber of commerce; you had Bill VanLandingham who is a school board member; I think Elliott Goldstein who is a lawyer there in Atlanta.

But you also had blacks there.

Mr. RIEGLE. Yes; I understand.

Mr. KING. Would you be interested in their names?

Senator RIEGLE. I would, yes, indeed.

Mr. KING. OK. You had in that meeting Mr. Calloway, of course, who was the cochairman; Mr. John Cox, who succeeded Mr. Cochrane at the Butler Street YMCA; Mr. Liven Wade who had been appointed by the District Court as the chairman of the Bi-Racial Committee on School Desegregation; I was there; Mr. Q. B. Williamson, who is a city councilman and was also on the board of NAACP.

Senator RIEGLE. You said that Judge Bell spoke for about an hour.

I assume that the first part of it was a presentation of some sort and then was the remainder a question and answer period or was it all an exposition on his part?

Mr. KING. No; there were questions and answers. I think people wanted to know just basically what was the status of school desegregation.

I think one of the points that he did make—I'm just remembering all of this—was the fact that smaller towns outside of Atlanta had done a better job of desegregating their schools than had the big cities like Atlanta.

Senator RIEGLE. To what extent did the focus get narrowed down to the Atlanta situation, specifically, and the options that were open to settle that matter?

Mr. KING. Bell did not focus it down to that. Bell did not do that. That was one of the things I really wanted to bring forward here.

The persons who focused on the Atlanta school situation were Mills Lane and W. L. Calloway, the two cochairmen.

Senator RIEGLE. Now when you say they focused on it, do you mean in terms of questions they put to him?

Mr. KING. Bill Calloway said to me: Lonnie King, you are the president of NAACP. Bill VanLandingham, you are a member of the school board. What are you going to do about a million dollars having been spent on legal fees in a school situation that is now roughly 82 percent black?

How are you going to desegregate it? Is it possible for you, the plaintiff and the defendant, to get together to discuss any possible settlement?

My position to this, frankly, was I didn't know.

We agreed to meet and talk about it. I did meet with them.

Senator RIEGLE. This happened during the meeting, however?

Mr. KING. This discussion happened during the meeting, yes, but none of my meetings with the school board officials happened with Bell around at all.

Senator RIEGLE. No; but as I understand this meeting, he's made a presentation, the question and answer period gets started, you get focused in on the Atlanta situation, and there's, I gather from what you've just said, some rather pointed discussion about where to go from here on the Atlanta case specifically. Is that right?

Mr. KING. Yes.

Senator RIEGLE. I guess what I don't understand right now, with Mr. Bell the speaker and sort of the focal point of the meeting, when this discussion evolved what part would he play in it?

Mr. KING. Bell did not play any part.

Senator RIEGLE. So he just sat and listened to this?

Mr. KING. Bell did not say anything at all.

Senator RIEGLE. So you're saying this just was a discussion that ensued sort of around him at that point?

Mr. KING. Let me just try to set the stage for you. After a speaker has spoken at the action forum, we pretty much ignore that speaker. That's what really happens. Some speakers leave but we always say that you're entitled to stay if you would like to stay.

Bell stayed, but Bell did not say a thing that was improper or participate once we talked about trying to sit down and try to settle this case. He did not.

Senator RIEGLE. I'm impressed that you can remember it that precisely, but how can you say that with such certainty?

Mr. KING. I can only say what I saw and what I heard. Now, I can't speak for the school board or what Bell did with the school board outside of that meeting or what happened——

Senator RIEGLE. No; and we're not questioning that now. I'm just really interested in pinning down what happened in the meeting, but you're saying that, while he stayed, that your memory is very clear that there was no further comment by him?

Mr. KING. Not only is my memory clear, but I checked my memory. I got in touch with the black members who were at that meeting before I came. I wanted them to tell me: Would you give me your recollection because this is going to come up?

Senator, without fear of successful contradiction, I would stand with my statement on that. Bell did discuss the status of school desegregation throughout the South. He did talk about the fact that the smaller communities where there are no egress points, 50,000 and under, they're doing a better job of desegregating schools and getting along together than they're doing in those major urban centers like Atlanta.

Senator RIEGLE. Let me understand, then, just finally, in the latter part of the discussion, when the speech was over and the group really got at it, and were talking about the Atlanta plan, describe as fully as you can the remaining part of the meeting up until the time that everybody left the room.

Mr. KING. I think I've already done that. Senator Riegle. First of all, we normally have two items on the agenda. I don't know what else was on the agenda. I really only focused in on this education issue but I could find out by just——

Senator RIEGLE. No; I'm really interested in the part of it that relates to the Atlanta plan.

Mr. KING. Calloway and Lane, the two cochairmen who sit side by side to end those meetings, suggested that I and Van Landingham consider sitting down, to get the school board and NAACP to sit down to try to work out some sort of a settlement.

Calloway's position was that it was ludicrous to continue spending money at this rate and we apparently aren't doing anything.

Senator RIEGLE. Just to finish, so how long would you say that discussion went on, 15, 20, 30 minutes, what?

Mr. KING. It couldn't have been over 10.

Senator RIEGLE. Not over 10 minutes?

Mr. KING. No.

Senator RIEGLE. And then is that the end and the meeting broke up or what?

Mr. KING. No; there was another item on the——

Senator RIEGLE. OK; apart from the other item that you don't remember.

Mr. KING. I'm trying to focus in on that. I think the other item was employment, Mr Riegle. I think it was employment that we discussed but let me try to set it clear for the committee one more time.

We had a meeting last Saturday, for instance. There were two items on the agenda. One was international affairs and a gentleman who was

the executive director of the Southern Council on Political Action came in and talked for an hour and a half on international affairs and its impact on the South.

When he finished his presentation, we then went into a discussion of the upcoming general assembly and the kinds of bills that might be coming up that we ought to be concerned about.

He sat there through that meeting. He said nothing. That is a typical meeting so it is not unusual for Judge Bell or any other speaker to come and speak in the first part of the meeting and then stay through.

It's rather impolite to ask them out if you've asked them to come and talk.

Senator RIEGLE. I think I have a clear picture of it. I appreciate your walking me through it.

That's all for me, Mr. Chairman.

Chairman EASTLAND. Are there any further questions?

Senator SASSER. Mr. Chairman, could I just ask a few questions here?

Chairman EASTLAND. Certainly.

Senator SASSER. Mr. King, I'm not clear in my mind on a few things. Now, were you president of the NAACP chapter in Atlanta when the school case was filed there?

Mr. KING. No, no. No; I was a youngster.

Senator SASSER. When was the case filed in district court there?

Mr. KING. It was filed on January 11, 1958.

Senator SASSER. Now, did it ever get out of the Federal district court there and up into the appellate structure?

Mr. KING. You'd have to ask some of the lawyers about that but I believe that it may; you see, we integrated the schools in September 1961.

Senator SASSER. Was this voluntary integration or was it under court order?

Mr. KING. No. No; there are very few voluntary things down there.

Senator SASSER. It was under court order?

Mr. KING. That was a court order and I'm not sure whether it was appealed to the fifth circuit or now, but I know there was a court order that Atlanta schools had to integrate in September 1961.

Nine kids went to those schools.

Senator SASSER. What I'm getting at, during the course of this litigation, you gave different percentages of black students. What was the percentage of black students when the lawsuit was filed?

Mr. KING. It was 38.8 percent.

Senator SASSER. And what was the percentage of black students in the school system when you settled the lawsuit?

Mr. KING. It was 81.5 percent.

Senator SASSER. What had happened in that interim? What had happened to the white students?

Mr. KING. White flight.

Senator SASSER. White flight to the suburbs?

Mr. KING. Right. We had 56,191 whites in 1958, and in 1973 we had 15,997.

Senator SASSER. And what about black students? Did that number remain pretty constant?

Mr. KING. In 1958 we had 35,571, and in 1973, 71,786.

Senator SASSER. So the number of black students had increased rather dramatically?

Mr. KING. Right.

Senator SASSER. While the number of white students had declined?

Mr. KING. Right.

Senator SASSER. Now, this organization known as the Action Forum, you indicated some of the members of the Action Forum; I think you said Miles Lane, former president of the C. & S. Bank in Atlanta. That is the largest bank in the city of Atlanta; is it not?

Mr. KING. In the State of Georgia.

Senator SASSER. In the State of Georgia. And Ivan Allen; was he mayor of Atlanta at that time?

Mr. KING. Ivan Allen is not a member of the action forum. His son joined the action forum but it was after 1973.

Senator SASSER. And you said the president of the Atlanta Chamber of Commerce was a member?

Mr. KING. Right.

Senator SASSER. Well this sounds like sort of the black and white power structure of the city of Atlanta. Is that a fair statement?

Mr. KING. It would seem that way to me; yes.

Senator SASSER. And as I understand it, then, Judge Bell came to address the action forum on the question of the law of the land with regard to school desegregation. Is that correct?

Mr. KING. Yes.

Senator SASSER. Was it after that that a meeting took place between the various complainants or those interested in the lawsuit?

Mr. KING. Yes.

Senator SASSER. And Judge Bell, he did not instigate this meeting, did he?

Mr. KING. No. No; we meet every Saturday. I'm sorry; once a month.

Senator SASSER. And at this meeting, that is where you discussed the possibility of settling the controversy out of court?

Mr. KING. Mr. Calloway and Mr. Lane.

Senator SASSER. Mr. Calloway is a black man, is he not, and I think was exposed earlier as a Republican by Mr. Cochrane? Who was the other individual?

Mr. KING. Mr. Lane, Mills Lane.

Senator SASSER. Mr. Lane. Now you said that \$1 million had been expended during the course of this litigation in legal fees. Was this \$1 million of NAACP money pursuing this lawsuit or was it—

Mr. KING. I'm not even sure that \$1 million was accurate but that was the figure that was thrown out. It was supposed to represent the legal fees from both sides if you added them all up.

Senator SASSER. Is your testimony that you never had a meeting with Judge Bell without your attorneys present to discuss the settlement of this lawsuit or this litigation in the court system there in Georgia?

Mr. KING. I met with Judge Bell when he came to address the action forum. In other words, that's my first time meeting him.

Senator SASSER. Did you ever meet with him again?

Mr. KING. Oh, I've seen him on the street.

Senator SASSER. My point, though, Mr. King, did you ever meet with Judge Bell at his instigation to discuss the merits of this suit and try to work out some sort of compromise settlement?

Mr. KING. No.

Senator SASSER. You did not?

Mr. KING. No.

Senator SASSER. And he never, then, told you to get together with him without the lawyers being present to discuss the case.

Just one final question, Mr. Chairman, then I will quit because I know the hour is getting late.

I gather that the NAACP national headquarters, after evaluating the settlement of the litigation, was not happy with it. Are you no longer a member of the NAACP in good standing?

Mr. KING. No; that's not really—they suspended me for a couple of years, but let me just say, Mr. Sasser, again to reiterate, that every step of the way in the development of that settlement I was with an NAACP official.

The regional director—I did most of it at her home. She stayed in constant contact with the New York office. Mr. Wilkins called me, I think I said that earlier. The New York Times had a front page article about his congratulating me.

Now what happened between the time he and I talked and the time that I got the telegram I really don't know but I have presumed, and I think any other reasonable man could presume, that there was an evaluation that was a continuous process because we didn't do this overnight. This took several months of meetings, negotiating, and talking.

Senator SASSER. Of course that is very important to you, and I think an important matter, but it is really not relevant to this issue here. What I am trying to get at is the question of whether or not Judge Bell did inject himself into this settlement, this court settlement.

You say he did not and that satisfies me. Thank you.

Senator HEINZ. Mr. Chairman, if I may?

Chairman EASTLAND. Certainly.

Senator HEINZ. Mr. King, I have just one brief question for you. That is, in the course of Judge Bell's address to the action forum and his speech on school desegregation did he indicate at any time that metropolitanwide busing was not the law of the land, it was not something that would be achievable? Did he touch on that in any way, shape, or form?

Mr. KING. No. No; I don't recall his talking about metro desegregation at all. He may have, but I don't recall it.

Senator HEINZ. Thank you.

Mr. King, might I just add that I think your contribution has been very helpful to us all.

Mr. KING. Thank you.

Senator SASSER [acting chairman]. Just let me say, Mr. King, that we very much appreciate your being here with us today. Thank you for bringing this information.

Mr. KING. Thank you very much.

Senator SASSER. Thank you, sir.

Mayor Cooper?

Mr. COOPER. Mr. Chairman.

Senator SASSER. I want to welcome you to this committee today and to say that you have been very patient the past 2 days through this testimony.

We look forward to your testimony. You may proceed.

**TESTIMONY OF A. J. COOPER, MAYOR OF PRITCHARD, ALA.,
PRESIDENT, NATIONAL CONFERENCE OF BLACK MAYORS**

Mr. COOPER. Mr. Chairman, in spite of my rare disagreement with several distinguished colleagues for whom I have great admiration, my sense of fairness compels me, in regard to the confirmation of Judge Griffin B. Bell, to share with you my insights on this matter.

I am comfortable in so doing because I believe that the black community can have unity without uniformity. I am aware that a white male from the Deep South who must endure close and careful questioning from some civil rights organizations will be made most sensitive to those matters which are important to the minority groups of this Nation.

Some say this baptism of fire could be helpful by making the nominee desirous of demonstrating that a white southerner will insure the enthusiastic and ardent enforcement of the law and the vigilant protection of the rights of minorities more than the usual and now accepted white liberal who feels that he or she knows all of the problems of minorities but has neither a moral nor a political imperative to act further.

On the contrary, I am pleased today to be able to express to you my support of the nomination of Griffin Bell to be the Attorney General of the United States and respectfully to urge this committee to recommend his confirmation to the full Senate.

I speak to you from my experience; my experience as a founder of the Black American Law Student Association in 1967, a group now with chapters in most law schools in America; my experience as the first black national officer of the American Bar Association's Law Student Division where I served as national treasurer after defeating now-Congressman Mendell Davis of South Carolina; my experience as a cofounder and former member of the board of the National Conference of Black Lawyers; my experience as an intern and a cooperating attorney with the NAACP Legal Defense Fund; my experience in being elected and reelected the mayor of a poor biracial city in the Deep South.

Most importantly, I speak to you as a lawyer who has handled civil rights cases before Judge Bell.

I learned much of my civil rights law at the New York University School of Law under the tutelage of then-Prof. Robert L. Carter, now a Federal district judge in New York. Judge Carter was one of the principal architects of the NAACP's court desegregation battle.

I received my basic clinical legal training at the legal command center of the civil rights struggle, the NAACP Legal Defense Fund. I received by baptism of fire in those bastions of judicial conservatism, the courtrooms of Alabama.

These experiences equip me to speak with authority as to Judge Bell's performance in the sweat and dirt of the arena of the civil rights struggle in the fifth circuit.

My knowledge of Judge Bell primarily comes from my representing for 2 years the private plaintiffs in a school desegregation suit, *Davis v. The Board of School Commissioners of Mobile County*.

Judge Bell was the lead judge. This litigation spanned a decade. There were over a dozen appeals to the circuit court. In two instances there were appeals heard by the U.S. Supreme Court.

In the latter instance, *Davis* was the companion case to *Swan* in the Supreme Court. The decision of the Supreme Court in these two cases firmly established busing as a clearly permissible tool in the panoply of devices permitted for courts to use to insure the desegregation of schools.

This clear statement of the Supreme Court led the thoroughly defeated defendant school board in *Davis* to enter into a consent decree agreed upon by the parties.

I also represented the plaintiff black police officers in *Allan v. Mobile* which has been mentioned earlier here which was at the time, in part, a test case in developing the law on testing and test validation.

As a result of my involvement in *Allan*, I was once again able to see Judge Bell's performance firsthand.

Senators, I do not pretend to support Judge Bell because I agree with each of his decisions. I support the nominee because in the matters which I personally handled I found in him certain basic qualities which I believe have a bearing on accurately predicting his future performance as Attorney General.

Lawyers and judges can have sincere differences of opinion and reach different conclusions honestly on the same set of facts, especially in the context of interpreting developing areas of the law.

This is especially true when advocates are attempting to develop new legal theories and also trying to broaden established precedents.

I note that none of the written testimony of which I am aware, with the exception of the testimony of Citizens for Class Action Law-suit, Inc., presented by the opponents to Judge Bell's confirmation, approaches in a lawyer-like fashion the substance of the opinions of Judge Bell.

None of the aforementioned testimony discussing the opinions of Judge Bell are set in the context of applicable Supreme Court decisions or the prevailing case law in the fifth circuit.

The reason may be that most civil rights attorneys would agree that the judge's civil rights decisions usually range from moderate to liberal and were within the limits of existing case law.

This is not to say that the decisions could not have been more in our favor. Of course, every advocate desires the most that can be achieved. However, the refusal of an appellate court judge by his decisions to extend legal theories to the outer limits desired by civil rights lawyers cannot be interpreted to mean automatically that the judge is either hostile or a racist.

As a black elected official in the Deep South, I have a view of the civil rights struggle different from some who live in Washington and

New York. As the mayor of Pritchard, Ala., I have to struggle on a daily basis with reconstructed and unreconstructed white folks.

Black Americans have always been a forgiving people. Dr. Martin Luther King, Jr., dreamed and died for the day when all of us, black and white, could share power. It is this theory of redemption which has enabled black southerners and white southerners to lead this Nation toward the realization of the promise of our Constitution.

I know that in the South the progress of blacks will come to a halt if we cannot continue to build bridges and cross bridges with white southerners in spite of acts they may have committed 10, 15, or 20 years ago.

This is surely just as certain for blacks and whites in the North, the East, and the West. It is clear to me that we must move beyond the past if there is to be a biracial future for America.

Judge Bell's candid responses to the queries of this committee and my own experience with him to say to me that he is committed to working toward that biracial future.

I must candidly say, Senators, the young blacks from my city who are in colleges and graduates schools are minimally concerned about what exclusive bona fide private social club to which any of you or any other white may belong, but they are maximally concerned about whether an individual with a degree in public administration can gain admission to fair employment opportunities in the extremely exclusive club of the Congress and the Federal agencies.

They are concerned whether their teenage brothers and sisters will ever find work anywhere.

If we are to move on, on one hand, some must assume both legally and legislatively that what is becoming one of America's most exclusive clubs for blacks and minorities—the jobsite—is opened up for every willing American.

On the other hand, some of us must stop living for our grandparents and live for our children. We must put aside the Mayor Cooper syndrome by which we require and insist that white folks not only change their ways but get on national television and say Mayor Cooper, I'm sorry.

The nomination of Judge Carswell was wrong and Judge Bell was wrong in supporting the nomination. One has to be neither learned nor psychic to understand clearly that Judge Bell regrets his actions and would not have sent the letter of endorsement if he had known what he knows now.

As I conclude, my experience with Judge Bell is that he was one of the most intelligent and thoughtful judges in the fifth circuit. He was a judge who was willing to listen, to be educated, and one who could be persuaded to change his views when given a solid legal peg on which to hang his judicial cap.

He was a judge who treated black lawyers with dignity and respect in formal proceedings and one who treated us cordially in court conferences. I found Judge Bell to be most impatient with defense attorneys who offered spacious arguments for the simple purpose of delay.

As the judge mentioned yesterday, much can be accomplished in conferences between the court and the parties in school litigation. In

these settings, it was my experience that Judge Bell was forceful in insisting that the defendants comply with the law.

His efforts were geared to get the parties to comply with the law expeditiously. Where there was firm disagreement, he sought agreement in ways consistent with the law and which both sides could accept with integrity.

It is to Judge Bell's credit that he also insisted on district court judges doing what was right and necessary to enforce the plaintiff's rights. I'm certain that this included direct telephone communications with the district court in order to assure that the usually recalcitrant district court would act reasonably on matters which had been reversed or remanded.

A final matter of significance was the judge's innovativeness and sense of fairness. In Taliaferro County, Ga., he shocked many when he placed a school system in receivership.

In an appeal in the *Davis* case involving attorney's fees, he issued a decision resulting in almost \$100,000 in fees to the NAACP Legal Defense Fund and local counsel. The defendants had reneged on their agreement to pay the fees and the district court had dismissed the motion for attorneys' fees.

I simply believe that this committee and the full Senate should give Judge Bell an opportunity to demonstrate that he will enthusiastically support the Constitution, enforce the laws of the Nation, and carry out the principles set forth by President-elect Carter during his campaign.

Thank you, Senators.

Senator SASSER. Mayor, we are grateful to you for an eloquent, thoughtful, well-reasoned, and, I might say, tolerant statement.

With the force which you have presented it, I hope that I never run up against you in a courtroom, or politically for that matter.

I would like to ask you just one or two questions and then others on the committee might have some questions. I note in your statement you say that there was an appeal to Judge Bell's court in which he rendered a decision resulting in almost \$100,000 in fees to the NAACP Defense Fund and the local counsel.

Had the lower court failed to hold that way? Was he reversing the lower court?

Mr. COOPER. Yes, sir.

Senator SASSER. I notice also that you refer to a district court which was usually recalcitrant. Where is this court located?

Mr. COOPER. The District Court of the Southern District of Alabama. The sitting judge at the time on Bernie Mae Davis was Judge Daniel Thomas. The sitting judge since then on that case has been Judge Brevard Hand.

I think they probably have, in civil rights cases, a 95, 99 degree reversal rate.

Senator SASSER. I see. I assume from your statement here that Judge Bell was exercising his prerogatives as an appellate judge in riding herd on that district court?

Mr. COOPER. Yes, sir.

Senator SASSER. I see.

It looks like you and I are the only ones left here, Senator.

Senator RIEGLE. Thank you, Mr. Chairman.

I have some questions that have been prepared that I want to go over with you just quickly. The first one relates to the fact, as I'm told, that you supported Governor Wallace in his last race for Governor in Alabama. Is that right?

Mr. COOPER. You were told incorrectly, sir.

Senator RIEGLE. That is not correct?

Mr. COOPER. No; it is not.

Senator RIEGLE. Were you active in that campaign?

Mr. COOPER. No; I was not, sir.

Senator RIEGLE. So you took no sides whatsoever for any candidate?

Mr. COOPER. No; I did not.

Senator RIEGLE. Let me ask a different question.

Mr. COOPER. I believe at the time my brother was running in the State legislative race. I was active in that campaign and, as you know Senator, many times politicians try to stay involved in only one race at a time.

Senator RIEGLE. So your brother was a candidate and you were involved with him but you did not support in any way, shape, or form Governor Wallace's campaign?

Mr. COOPER. No, sir.

Senator RIEGLE. I don't mean these questions to be provocative, but they are here and I just—

Mr. COOPER. No. You just shoot your hardest shot, sir.

Senator RIEGLE. OK. Were you involved in negotiating a settlement of the *Mobile* case under Judge Bell's supervision?

Mr. COOPER. Yes, sir, I along with members of the staff of the NAACP Legal Defense Fund, which settlement was approved by the plaintiff in the case and also approved by the school board.

Senator RIEGLE. Do you recall offhand how many black children remained in all black or virtually all black schools as a result of that settlement?

Mr. COOPER. The settlement was entered into, if I recall correctly, in 1972; 1971 or 1972, and I do not have a specific recollection of it.

Senator RIEGLE. The information I have is that apparently about 45 percent. Would that ring a bell?

Mr. COOPER. It does not ring a bell, but it may be correct.

Senator RIEGLE. Do you recall offhand, were all the children in the district bused? I mean, were the white children and the black children both bused or not? Or were only the black children bused?

Mr. COOPER. No; white and black children were bused.

Senator, let me say this. The *Bernie Mac Davis* case was appealed to the U.S. Supreme Court. It was remanded to the circuit court at which time I received a call from the chairman of the Mobile County School Board who said: "We are tired of litigating. We'd like to settle this matter."

Over a period of some 4 months, there was hammered out between the plaintiffs, the representatives of the NAACP in Mobile, the representatives of the Nonpartisan Voters' League, the representatives of several other black organizations a plan.

There was also prepared a plan by the Mobile County School Board. There were negotiations with regard to both of those plans.

There was a plan developed which the citizens, black and white, represented by their representatives and their counsel, which was agreed upon. That plan was presented to the court and was accepted.

Much of this was done in the district court. Some of it was done in the circuit court.

Senator RIEGLE. I'm not personally familiar with it, but the information I have suggests that there were some differing opinions within the community and that—

Mr. COOPER. Mr. Chairman, hindsight is 20/20 vision. At the time the case was settled it was considered to be a victory. It was considered that we had done some landmark things.

Senator RIEGLE. But there were some black parents apparently that did not—

Mr. COOPER. No, sir, not at the time that we settled that lawsuit. When we settled that lawsuit everyone was in agreement on the settlement including the national NAACP and including the NAACP Legal Defense Fund.

Senator RIEGLE. Was there a time at some point with respect to that case where there was a group of black parents that were upset enough about it that they came and picketed your office? Is that correct?

Mr. COOPER. Mr. Chairman, when I was running for office—

Let me preface this by saying something. You know I heard some people talk about vindictiveness and the fear of what might happen because they were up here testifying against Judge Bell. Let me say that because some people belong to civil rights groups, or are in civil rights organizations, it does not automatically absolve them of perhaps having a vindictive attitude.

I will get into that more later.

However, there came to be a time in our county where there was to be a school closed, Tolmanville High School. It was an all black school. It was in very bad shape and it still is today.

Under the existing law then, and as it is now, when you build a new school you have to apply to the District Court to get permission to do so and the law required that that school be built in an area which would promote desegregation rather than in an all white district or an all black district.

That was the law and I believed in it deeply. As an NAACP Legal Defense Fund cooperating attorney, I took that position. I took it with my clients and I insisted on it.

The black students and the black parents who attended that school wanted to keep their school. Tolmanville High School was named after General Tolman, a Civil War general. Blacks had only attended that school for about 10 or 12 years. Eventually it became an all black school.

They cited to me the heritage of the school and things like this. I said: But the overriding thing I have to deal with is what the law is and the law is that the school must be built at a different site.

Since that time, black people have thought different things about school desegregation. They've thought perhaps that busing is not the whole answer if it means sending only their children. They've also thought that perhaps if it means tearing down black schools and moving them a little farther, that's not the answer.

Black teachers live near those schools. Black children live near them.

Some of us have had to have the integrity to stand up even in black communities and say: No; that's not what the law is. It seems strange to me now, Senator, that some people in the NAACP would like to

suggest that perhaps that was an imperfection on my part that I argued that position which NAACP lawyers had spent over a decade establishing as part of extending the theory of school desegregation law.

Senator RIEGLE. So I guess your response, then, in summary, and I've heard all you've said, is that it was at a later point in time that some people were upset with you in the black community because the all black school would be closed and therefore any demonstration at that time was on that basis and no other.

Mr. COOPER. Senator, I would put it differently. I don't believe they were upset with me at all. I was elected mayor of my city. I was re-elected with 65 percent of the vote.

I think they were upset with the fact that the constitutional state of the law was not what they would like it to be and that that constitutional state of the law applied to black citizens as well as to white citizens, that we had to take the bitter with the sweet.

Senator RIEGLE. And when did that happen?

Mr. COOPER. I'd say that would be in late 1972. It would be approximately a year after the settlement.

Senator RIEGLE. I see, and you, of course, I gather, have run for reelection since that time and have been elected. You are the mayor now?

Mr. COOPER. I was elected in 1972 and I was reelected this past August with 65 percent of the vote.

Mr. RIEGLE. How many times would you say that you appeared before Judge Bell? I am thinking now of number of cases rather than—

Mr. COOPER. I have appeared before him in two cases, but on several occasions in those two cases.

One of the things, Senator, that I was taught early in law school was that when you are going to appear before a judge you try to find out about the judge that you are going to appear before so that you might frame your arguments better; so I had occasion not only to, at that time, talk to other lawyers about Judge Bell, but look at some of Judge Bell's decisions.

Since that time, I have had occasion to continue to see what Judge Bell had done and I have had occasion to see him occasionally on a judicial conference.

Senator RIEGLE. What does that mean exactly?

Mr. COOPER. In this case, each circuit—there are some judicial circuits in the country and each circuit annually has a meeting and they call it a judicial conference. It is different from conferences that you would have between the parties in chambers.

Senator RIEGLE. I see, and then any lawyers who practice in that circuit can go to this conference if they wish; is that the idea?

Mr. COOPER. No. The lawyers who attend are normally lawyers who have been invited by the district court judges.

Senator RIEGLE. So did Judge Bell invite you to attend?

Mr. COOPER. I said the district court judges, sir.

Senator RIEGLE. I see, so one of the district court judges invited you to attend?

Mr. COOPER. Yes.

Senator RIEGLE. Was the thrust of your point that while there you had an occasion to become better acquainted with Judge Bell? Is that the idea?

Mr. COOPER. Yes, sir.

Senator RIEGLE. But that's the extent of the relationship?

Mr. COOPER. Yes, sir.

Senator RIEGLE. I appreciate your coming and your statement.

That is all for me at this point, Mr. Chairman.

Senator SASSER. Senator Mathias?

Senator MATHIAS. What was the name of the case that you were just discussing, Mr. Cooper?

Mr. COOPER. We discussed *Davis v. the Board of School Commissioners*.

Senator MATHIAS. I was called out of the room and missed the early part of your discussion.

Mr. COOPER. I think you have a copy of my testimony.

Senator MATHIAS. Yes, and in that written statement you mention the *Mobile* case.

Mr. COOPER. Yes, sir. That is the *Mobile* case, sir.

Senator MATHIAS. And that one was reversed; right?

Mr. COOPER. That case spanned over a decade. It was in the court of appeals over a dozen times. We had motions there a number of times. It was in the U.S. Supreme Court twice. It was the companion case to the *Swann v. Mecklenburg* case in the U.S. Supreme Court.

Senator MATHIAS. Ultimately that case was reversed?

Mr. COOPER. Ultimately it was reversed. It was reversed and remanded to the district court and there was a consent decree entered into by the parties.

Senator MATHIAS. What was the basis for the reversal?

Mr. COOPER. The basis of the reversal—it went up on several questions, the number of schools which were required to be integrated and the busing question and it established the principle that busing was a permitted device for district courts to use.

As a result, busing was instituted in Mobile County, Ala.

Senator MATHIAS. Now, what was the error the court found in Judge Bell's action?

Mr. COOPER. We were concerned that the degree of desegregation was not sufficient at the time and we appealed that and the Supreme Court agreed with us.

Senator MATHIAS. How about the other case, *Allen v. Mobile*?

Mr. COOPER. *Allen v. Mobile* was a lawsuit which was brought by black police officers in the city of Mobile. It had two distinct parts to it.

The first part dealt with discrimination within the police department itself as to things such as black police officers being required to patrol only in black neighborhoods, black police officers not being permitted to attend certain types of schools, black police officers being called nigger on the police radio.

The other side of the case involved the Mobile County Personnel Board. In that area of the case we were concerned with the fact that black police officers were not being promoted nor hired fairly and it

dealt primarily with testing, whether the tests that were being used were fair tests.

We had a consultant, Dr. Richard Barrett from New York City, who is an expert in industrial psychology and testing. I might say this. This was one of the very first cases, which was brought in this area, on this subject.

We knew at that time that it was a test case and we were trying to expand the law in that case.

Dr. Barrett, in many ways, was a very good and competent witness; however, as it turned out, he had some problems with the facts which affected his credibility.

For example, in the case the court asked him about the size of the police department. Dr. Barrett testified that it was a fairly large police department of some 2,000 officers and 200 or so sergeants. The fact is there are only about 242 police officers altogether in the department. That caused us some problems.

We tried to clear them up, but I think it had a distinct effect on the district court's decision.

The court gave us almost everything we asked for in the discrimination area with regard to the police department practices themselves.

Senator MATHIAS. Operational practices?

Mr. COOPER. Operational practices. On the other side of the case, with regard to testing, we got nothing from the district court. It went up on appeal. In a per curiam decision, the district court was affirmed. There was a dissenting opinion which is quoted in some of the testimony which has been presented here which takes Judge Bell to task, or takes the court to task.

What is interesting, though, the decision begins, if I recall correctly, with the statement that the court is reluctant to criticize the distinguished and enlightened lower court which wrote an outstanding opinion. Then it proceeded to do so.

Senator MATHIAS. That is a habit we have around here, too. The nicer you are when you start a speech about one of your colleagues, the worse it is likely to end up.

Mr. COOPER. I am going to get to that, also, Senator.

In my testimony, I alluded to the fact that civil rights lawyers have traditionally been advocates, people on the cutting edge of the law. We have tried to push a law to its outer edge because we believed that we had to in order to protect and secure rights which were not forthcoming which should have been forthcoming without even the filing of the lawsuits.

In doing that, because you happen to lose or because judges do not agree with you, I do not think we can therefore conclude that the judge is either hostile or racist and that is the suggestion which I think has been put forward here in many cases with regard to Judge Bell in spite of the fact, in my opinion, the judge has been willing to state—

Senator MATHIAS. Let me say that I share that principle with you and I think it is an extremely important principle for the maintenance of our Federal court system or any court system.

The independence of judges has to be maintained and they should not be intimidated in any way for decisions that they have reached in good conscience.

Mr. COOPER. Yes, sir.

Senator MATHIAS. So the personnel practices have been maintained. That is the net effect?

Mr. COOPER. Yes, sir, and in large measure they have been maintained to this day in spite of the fact that there have been numerous lawsuits brought in other areas of the country which have sustained the position we took early on but which was not the law of that circuit nor the Supreme Court law at the time.

Senator MATHIAS. What has been the effect on the number of black policemen in Mobile?

Mr. COOPER. The effect has been that the number of black police officers has remained tremendously low to the detriment, I believe, of the entire community; but I must say that this case, *Allan v. Mobile*, was not appealed to the U.S. Supreme Court by the NAACP Legal Defense Fund.

The decision not to appeal it was a recognition that the decision was basically sound in the context of the law at that time, and we did not want to risk an appeal to the U.S. Supreme Court which would have, most likely, affirmed it and thus establish firmly not only in the fifth circuit that case law but in the entire Nation.

So there is more than a little bit of what I will call legal politics that goes on, in reaching some of these conclusions.

Senator MATHIAS. I want to thank you very much and express my admiration and a little bit of envy for a man who can get 65 percent of the vote.

Thank you very much.

Mr. COOPER. Thank you, sir.

Senator CHAFEE. Mayor, I want to join the welcome to you here and also compliment you not only on getting 65 percent, but on getting reelected.

I would just like—and maybe you have gone over this, we may be plowing old ground. Unfortunately, I could not be here through your whole statement. But in that *Davis v. Mobile Board of Education* case, which you and Judge Bell worked out, as I understand it—

Mr. COOPER. Not only Judge Bell and I, but Judge Bell and I and other attorneys from the NAACP Legal Defense Fund.

Senator CHAFEE. I see.

Mr. COOPER. And much of this was worked out at the district court level, also.

Senator CHAFEE. So you came to this settlement but then you also went ahead and appealed it at the same time?

Mr. COOPER. No, sir. The settlement was implemented. There was a portion—Let me say this. The lawyers involved, the plaintiffs' lawyers, agreed to put aside the question of attorneys' fees for the sake of implementing a decision.

We did not want to hang up the desegregation of schools while lawyers argued over some money and so we did that.

Senator CHAFEE. But then part of it was appealed?

Mr. COOPER. The plan did not include attorneys' fees. That was not appealed. Subsequent to that we filed a motion in the district court for attorneys' fees and that motion was denied by the district court. That was appealed.

Senator CHAFEE. And it ended up where, in the Supreme Court?

Mr. COOPER. No. That ended up in the Circuit Court of Appeals. It was reversed, sent back to the district court. The district court awarded \$38,000. We did not think that was adequate and we appealed that award back to the Circuit Court again and the district court was reversed again and ultimately we were awarded about \$98,000.

Senator CHAFEE. As we reviewed what took place in Mobile, about 45 percent of the black children ended up in all black schools, did they?

Mr. COOPER. I'm not prepared to make that statement because I'm not aware at this time. That was almost 5 years ago.

Every school in the country was to have a 60/40 ratio with the exception of approximately, I'd say, three black high schools and five black middle schools which were in all black neighborhoods.

As I recall, that was agreed upon by all of the parties and the organizations they represented in order to limit the degree of busing of children and also on the assurance of the defendants that certain things would be done within those schools in order to upgrade the quality of education within those schools.

This was also in the context of some blacks in the community thinking that desegregation was not a worthy goal, period, and that we should have all-black school districts.

I see Mr. Roy Innis here and I remember a time I had to fight him because he wanted to come into our city and create all black school districts. We fought that fight because we believed in integrated schools.

Senator CHAFEE. I was interested to hear that, but getting back to your appraisal of Judge Bell, it is made on the basis of your appearing before him, your being present at judicial conferences, your having argued cases before him—these two lengthy cases—and on that basis you conclude that you find him fair and objective?

Maybe he did not always come down your way but you found him, in connection with civil rights matters—

Mr. COOPER. Mr. Chafee, I found him willing to look white southerners in the eye and say: Mr., this is the law and you will do it or else. That means a lot to me.

I think he will be willing to do that in enforcing the laws of this Nation.

Senator CHAFEE. Thank you, Mayor, for your testimony.

Senator SASSER. Mayor, let me touch on two points very quickly. There was some suggestion earlier this morning that black Americans felt that they had not had enough input into the Carter administration's selection of government personnel.

Do you have any personal information of that? Have you had any personal dealings with any of the members of the transition team?

Mr. COOPER. Senator, for about four consecutive weekends, I sat in on meetings of the steering committee of the caucus of black democrats. I believe we met twice in Chicago and twice here in Washington.

Governor Carter had requested the caucus of black democrats, which is chaired by a black man, Basil Patterson, the vice chairman of the democratic national committee, and was staffed by Frank Cowen of the democratic national committee and Ms. Barbara Williams, the executive director of the Congressional Black Caucus, to submit names and suggestions with regard to some 2,000 positions.

We met and tried to do that. Members of the transition committee met at least once with that group. Members of representatives of the group met at least once with Mr. Watson and submitted names.

I know for a fact that Congressional Black Caucus met personally with Governor Carter and submitted names so certainly we have had every opportunity to submit various people's names to the transition committee and to the President-elect directly.

Senator SASSER. All right, sir.

Mr. COOPER. Senator, there is one thing which if I did not mention I would really be derelict in my responsibility to other Southern black elected officials and indeed to black people as a whole who live in the South.

Senator SASSER. You go right ahead.

Mr. COOPER. Mr. Clarence Mitchell, the distinguished director of the National NAACP's Legislative Office here, his brother, Perrin Mitchell, the distinguished chairman of the Congressional Black Caucus, and indeed Mr. Rauh I think have insulted and impuned the integrity of hundreds of black elected officials and black southerners and, indeed, owe us all an apology.

Mr. Rauh had the audacity, sir, to suggest that I did not represent anyone. I can say to you I do represent the people in my city and I have to stand for reelection.

I am not here representing, but I am the president of, the national conference of black mayors which has 105 black mayors in it from across the South and from other parts of the country and I have been reelected to that post twice.

I don't know who exactly votes for Mr. Rauh, or who exactly votes for Mr. Clarence Mitchell, but we are representative and we have to account for our actions.

I understand that sometimes in the zeal of advocacy there is an excessive use of language, however Mr. Mitchell said some things and I would like to quote them because I think they are important.

Senator Kennedy commented—

There are those who are blacks and who are on this witness list, and to my own awareness and knowledge have suffered and experienced the kinds of indignities which you very eloquently commented about. They are here to speak in his behalf . . . I'm interested in what value we should place on their testimony.

Then Mr. Mitchell said that—

I say the reason why these people are up, and I know who they are and I know the standards that they set, is that they have had so little and have been so used to living under unfortunate conditions—so I'm not surprised that they can be assembled. I would say that it is unlikely that they would have been assembled if we hadn't had this opposition.

Then, later on, he tells a story by a gentleman named Pickens about an elephant. I think you recall that. He concludes the story by saying,

The elephant does not move because he has been chained in his mind.

And he says,

I would say, because I know many of these people who will come here to speak for Judge Bell, that they are chained in their minds.

I believe they come here in good faith, but they have been for so long under a system where second-class citizenship is a way of life that in their minds they believe that is right.

Then that it was made clear to them in Atlanta—

That if they can continue to have segregation in the public schools . . . and that they will share in the jobs of the administration.

He went on to say:

I sympathize with them. I have pity for them. I do not attempt to contest their right to be here, but I would say that I hope, as you listen to them, that you are not hearing the words of persons who look at the guarantees of the Constitution and the color-blindness of the Constitution as you and I look at it.

Now, the last thing he said was that:

I feel . . . —in response to a question, I believe, from Senator Chafee—I feel it is correct to say that those who come up to testify for Judge Bell have sold too cheaply.

Clarence Mitchell is one of my idols but I must candidly say, Senators, that I think he demeans himself by insulting our integrity that way.

I would also suggest that there are probably more blacks who would be here testifying but are afraid of the wrath of black civil rights leadership, that if they came here in opposition to this leadership they would be penalized.

I am concerned about the type of reception that I am going to get from them from now on as a result of my coming here to share my experiences with you.

I know that sometimes as a lawyer when I did not have the facts I would argue the law, that when I did not have the law I would argue the facts, and that when I did not have anything I would just argue. I submit to you that there has been a lot of just arguing here.

In the Carswell case, when I was at the Legal Defense Fund, we worked our butts off and we gave you gentlemen a case by case exposition of that man's decisions. If there were the concern that I am hearing here, they would have worked, too. They have extensive legal staffs. Joe Rauh isn't that busy. I have seen a Legal Defense Fund lawyer here for 3 days, standing back there. He could have been working on these decisions if that is what the problem was.

I think there is a certain elite attitude which even black northerners show toward black southerners, that somehow they know better, that we who live in the South have not had the opportunity so they still must paternalistically tell us how to do whatever it is that we may want to do.

I would like to submit, sir, that this is no survival game—because it is no game at all—as Mr. Mitchell said. Some of us have had the good fortune to have our parents put us through the best schools in America. We have had to work our way out of those schools and I think that we have had experiences in the movement which are the equal to many people who speak here.

I know also that I go to sleep every night in Alabama and I wake up every morning in Alabama when some people go to luxurious apartments in Baltimore and Washington and New York.

I believe that while my testimony may deserve no more weight than other people's, it certainly deserves no less weight.

Thank you very much.

Senator SASSER [acting chairman]. Thank you.

I assure you that your testimony will be given great weight by at least one member of this committee.

Thank you very much.

Mr. Roy Innis?

I guess he has left. We will get to him the first thing tomorrow morning.

Mr. MITCHELL. Mr. Chairman, with your indulgence, I would like for the record of this case to close at this particular section.

I am identifying myself as Clarence Mitchell, the individual to whom the previous witness referred.

I will say to him and the committee that I hold no animosity against him for exercising his rights under the first amendment.

I would say that I was aware of the fact that he was elected mayor of his community, and I am happy to say I thought that was a great event in this Nation's history.

His testimony must stand on its own feet. I do not retract anything I have said. But as evidence of my good faith in Jay, I want to now, in the presence of all these witnesses, to shake hands with him so that you can know I have nothing against you.

[Mr. Mitchell and Mr. Cooper shake hands.]

Mr. COOPER. Mr. Chairman, I do not want this colloquy to get expanded. I am always happy to shake Mr. Mitchell's hand. However, I note that he has not retracted any of his statements. So I certainly stand on what I have said.

Senator SASSER. Let me say that the Chair, and I am sure the committee, recognizes that there are areas of honest disagreement on this matter.

I know that Mr. Clarence Mitchell, by reputation, is a distinguished and eloquent spokesman, not only for black rights but for the rights of all Americans.

I have had the pleasure of meeting Mayor Cooper before, and I know him to be a very, very able lawyer and a very articulate spokesman, not only for his clients, but for black Americans, and not just for Southern black Americans.

So we thank you and look forward to hearing from you again.

Senator MATHIAS. Mr. Chairman, this committee has been in session now since 9 o'clock this morning.

Senator SASSER. Well, Senator, the real chairman approaches, and we may get a ruling.

Senator MATHIAS. I say to the real chairman: We have been in session since 9 o'clock this morning and it is now 6:30, Mr. Chairman.

Chairman EASTLAND. Yes; I am going to hear another witness.

Our next witness is State Representative McKinney. Please proceed.

TESTIMONY OF STATE REPRESENTATIVE JAMES E. McKINNEY, ATLANTA, GA.

Mr. McKINNEY. Thank you, Mr. Chairman, and members of this committee.

My name is James E. McKinney. People in Atlanta and in Georgia call me Billy McKinney.

I'm a State representative in my third term. I have a constituency.

I was elected with 79 percent the first time, 82 percent the second time, and 100 percent the third time.

I didn't think I would have to come here and establish any credibility.

Chairman EASTLAND. You don't have to.

Mr. McKINNEY. Well, I think I do since I have been attacked.

I was a policeman. One of the first black policemen in the city of Atlanta. I went on the police force in 1948.

Mr. Warren Cochran and the Negro Voters League were the people who made it possible for black policemen to get hired in 1948. They were what we call the black power structure.

They always operated in conjunction with the white power structure.

I, as a policeman, who was not allowed to wear my uniform to court and not allowed to wear it into the police station, did all of our business in the basement of the YMCA, totally without dignity, in 1948.

But I stayed there for 21 years, and I fought and I picketed the Atlanta Police Department. And I raised all kinds of hell. And everybody in Atlanta and everybody in Georgia knows that Billy McKinney fought for the dignity of and the rights of black Atlanta policemen.

I came to Resurrection City and stayed 3 weeks up here. So I do have a track record in civil rights and fighting for the dignity of black people.

The reason I am here—and I paid my own fare, too, and I have been here 3 days away from the Georgia General Assembly, and they are in session and voting and I will have to go back and explain my absence—is that I saw developing the worst distortion of fact that your administrative aides could ever put together, as if newspaper clippings could tell the true story of what went on during the events of the Vandiver administration and the establishment of the Sibley commission.

I would like to tell you that the Sibley commission was introduced in the general assembly by the present Governor, George Busby. There was terrible turmoil. Ernie Vandiver had campaigned on "No, not one. Not a single black child will ever go into a white school." And not only did he campaign on it, every member of the general assembly who won election that year campaigned on it. It was the only way you could win an election in Georgia.

I would like for you to know, and enter into the record, that last year, 1976, Judge Bell was honored at Morris Brown College, a black college over 100 years old, as the man of the year.

He was honored for his role in establishing the Sibley commission. That is just how important black people in Georgia figure the Sibley commission was and the significant role that it played.

I was not a politician during those days. I went on the police force in 1948, and I was a policeman. But I was a politician in 1972 when we were faced with the Stoley plan.

I am a pragmatic politician. I was then and I am now.

They were talking about, and Lonnie King presented you with statistics showing the number of black students, the relationship between the number of black and white students when the suit was filed, and in 1972 when Judge Bell suggested that we should all sit down and talk and resolve this thing.

The district court judge had appointed some college professor from Florida.

Do you all have my statement? I am just one of those Georgians, and I know that you don't place much credit on us Georgians.

Chairman EASTLAND. Your written statement? Yes; we have that.

Mr. McKINNEY. I am a Georgian, 49 years old, and born in Atlanta, Ga. And I am one of the people who suffered the indignities of segregation, and one of those who fought to eliminate it.

Warren Cochran sat here and told you the importance of moderation. I haven't always been moderate, because I have lambasted Warren Cochran as an Uncle Tom—him and the black power structure. But now I understand what moderation is about, and how important it was in those days.

But getting back to the 1972 Atlanta compromise plan, we were faced with some ignorant college professor from Florida named Stoley who said: Bus 35,000 students.

The relationship, the percentages—and you have the percentages—had gone from 35-percent black to 82-percent black. And only about 18-percent white. Now, today, it is 10-percent white.

How in the world can you put the financial burden on the taxpayers of busing 35,000 students, trying to find enough white students to say: We have an integrated system.

It was totally impossible.

They came up with the idea, along with the integration, that they were going to close down three black high schools, Douglas High, West Fulton High, and Price High.

The parents of those schools called me because I was an outspoken politician. They said: We don't want our schools closed.

They weren't going to close them. They were going to make them middle schools. They said, we've got championship basketball teams and championship football teams, and we have school tradition and we don't want this.

I called press conferences all over Atlanta at the instigation of the PTA's and the parents. Lonnie King and I, in conjunction, had public hearings all over Atlanta, jampacked with black parents saying: We don't want our kids bused. We don't want our schools closed.

Out of it came, and I don't know what Judge Bell did behind the scenes, he was a circuit court judge and had tremendous influence in Atlanta and I am sure that he had some influence over the district court judge saying: Let them get together and talk then.

They got together, and they started talking.

The lawyer who came here, Nathaniel Jones, with the NAACP, we ran out of Atlanta because he wanted to intervene in the suit and take it away from the locals and take it to New York, and he would run it out of New York.

We ran him, Nathaniel Jones, out of Atlanta.

I understand Roy Innis is here too. We ran Roy Innis out of Atlanta. He came there talking about how we want all black schools, and we don't want any whites. But he did have a good concept. Roy Innis had a good concept. He said: Neighborhood control.

And we put together black and white people talking, and we thought about neighborhood control and came up with the compromise plan with a minimum of busing.

I think it had ended with about 2,400 students to be bused.

But out of it we demanded and got a black superintendent. If there was an area superintendent here who was white, there had to be another one who was black. For every white assistant superintendent or administrator, there had to be a black one.

Now the test is not how many kids you bus from one school to another to get a quality education. Quality education comes from the audiovisual equipment. It comes from the quality of the teachers and the size of the building, the plant. All this goes to make quality education.

And something else goes with it: Involvement of the parents.

When you bus a kid from here all the way over to the west side, parent's don't go to PTA meetings any more. That element is—you're through with that.

The kid has to get on the bus at 3 in the afternoon, and if he wants to be in the band he can't stay for band practice. So then black kids can't be in the band any more. There are terrible philosophies in this mass bussing thing.

So the people in Atlanta didn't want it. We said let us rule ourselves. We are qualified, and we are capable.

We took—and I'm talking about black power now—control of the school system. A black superintendent.

Now politically we've got—the president of the school board is Dr. Mays. We've got a nine-member school board and five of them are black.

So then if white folks were mistreating us in the past—and they were mistreating us, they weren't sending us enough money to buy the audiovisual equipment and all the other electric-type items and everything to get a quality education—Judge Bell suggested: Share the power.

If you want quality education, then let black folks administer the money, and then they will see that the teacher is qualified. They will see that a new typewriter should go to this school, as they all went over there. Good books go to this library, like good books went to that library.

There is nothing in the world wrong with inner-America, neighborhood schools.

I never want my child—I turned off about this integration thing, let me tell you how.

It's been brought up here a little bit about how many black principles and teachers were put out of work in Georgia. They closed up the black schools and sent them all over there, and then there was no job left for the black people. That's no good.

But I fell out with this integration thing and with this bussing thing. I was playing golf in Atlanta one day, and looked over and I saw—and this was integration in Atlanta. I think they integrated nine students in the beginning—but there was one little black girl, and she was standing over by a tree. This was in elementary school. She was about 6 or 7 years old. All of the white children were just playing and having fun. I said to myself I will never subject my daughter to that isolation, because she will be warped and ruined for life in that kind of environment—and saying that's quality education.

My child would never, for the sake of being in a class with a white child, suffer that kind of humiliation.

Going back to 1974, 1972, and 1973, we took control of the Atlanta school system. We had everybody and every organization converging on Atlanta to tell us that we were wrong. You don't do this. You bus the kids.

There was not but 18 percent white kids. There weren't enough kids for us to bus. We've got 80 percent black and 18 percent white. There was no way to integrate the Atlanta school system. And Lonnie King and Warren Cochran and all of those people understood it.

Now I've never been a part of the power structure. They have never helped me get elected. And I fight them with a passion all the time.

This time they were right. I was in the street leading the movement against mass busing. They were meeting in their high-powered meetings down in the trust company building—the C. & S. building—getting it together at the instigation of black parents. People who wanted no part of mass busing.

All of you people up here who are from the North—and Senator Mathias, you act as though Maryland didn't have any problems. Maryland did have some problems. They may not have had as many problems as we had in Georgia, but you didn't have the atmosphere.

Do you know that white rednecks in Georgia rode with pickup trucks and carried shotguns as an intimidation to black people?

You have never been down there to see what it was to live in the South at that time.

So when you say moderation, you're talking about something that we thought was excellent, to be moderate.

Judge Bell was moderate. Judge Bell was a man who was working behind the scenes trying to take care of some business for black people. Not only did he do it then, he's been doing it down through the years.

I can't understand Clarence. I've idolized that man. I support the NAACP. If you go to the record, you'll find that I give my money and my time to the Atlanta NAACP.

I fought them in 1972 about that mass busing—the Stoley plan—just like I'll fight them here.

And I'm here not at the instigation of the transition team, not at the instigation of Judge Bell, but I'm here because I saw a pattern of distorted evidence developing.

You and your assistants have got some newspaper articles. And who says that one-half the things they wrote in the Atlanta Constitution were true? I hope that 10 years from now they don't take the Atlanta Constitution and say: Billy McKinney this and Billy McKinney that, out of the Atlanta Constitution. That's the worst kind of evidence you can have, a newspaper account of somebody.

Where am I in my speech?

Chairman EASTLAND. You are doing fine. [Laughter.]

Senator MATHIAS. If the chairman says you are doing fine, you are doing fine. But just let me say this. I don't question your credentials as to conditions in Georgia. I respect you, and I accept what you say as your view of the scene.

I think I know where I've been, and I know what went on in Maryland during these same years, and I'll maintain my view of that.

Mr. McKINNEY. You have the right to maintain your view. I've got my right to maintain my view about Atlanta and about Georgia, because I am intimately involved in it.

Senator MATHIAS. I respect that.

Mr. McKINNEY. I am intimate and involved in it on a daily basis.

People can't come from New York and go down there and tell us how to run Atlanta. They can't come from New York and tell us how to run Georgia.

There was at one time a need for centralized leadership, years ago.

But do you realize that there is no black leader in America any more? There is no black leader in America.

I get tired of people talking about the leadership in Atlanta.

Warren Cochran said that in 1965 the Negro Voters League dissolved. Do you know why it dissolved? Because Billy McKinney and folks like me came on the scene. We dissolved it because we said: You are no longer the established leader.

I am a politician. I deliver services to my constituents.

Senator MATHIAS. What you are really saying is you did not need them any more?

Mr. McKINNEY. We do need them. We need them but—

Senator MATHIAS. Not in the sense that you need them.

Mr. McKINNEY. You all have chosen three or four black folks and say they lead America—Coretta King, she doesn't lead anybody, Roy Wilkins, people who get national exposure—you say they are the leaders, they speak for all black people. Never a bigger lie could be told.

Leadership comes out of every community, and each community has black leadership. Those people who are leaders in that community make the community go. Warren Cochran and that crowd—Warren Cochran put me on the police force. Do you know that they made it possible, the Negro Voters League. There weren't but about 35,000 registered voters in the whole State of Georgia.

But Warren Cochran and C. R. Yates and John Calhoun controlled them. And what they did was use the threat of those votes to get the lesser of two evils. That's all we could ever get was the lesser of two evils until Martin Luther King got the Voting Rights Act, and we started to register to vote.

That put us in power. In Atlanta, we've got a black mayor and nine black councilmen. We run the school board and the general assembly. From Atlanta we've got 10 black representatives and 2 black senators.

So we've got black political power in Atlanta.

Senator MATHIAS. You know right in this room that Voting Rights Act was hammered out, fought over, discussed, voted on, as the chairman well remembers, and we were walking with you in that time.

Mr. McKINNEY. And we needed you so badly and look where you've brought me.

But you know I don't try to go to the NAACP. It hurts me to have to come here and say anything contrary to what the NAACP says, because I realize that they put us all in office—every black politician in America is in office now because of the fights of the NAACP. I realize that.

It hurts me. But then I can't sit around and let them degrade Judge Bell. I can't just let people tell a lie and say that the Atlanta school plan is something that's bad. We are living with it. We are happy with it. We have got political power. The superintendent is black.

Senator MATHIAS. The question really is: Do you give Judge Bell the credit for the plan?

Mr. McKINNEY. I give Judge Bell credit down through the years of providing a forum where black and white people can sit down and talk.

That's the most important thing in the South—black folks sitting down and talking.

They could use it a little bit up there in Boston.

Senator MATHIAS. I was going to say that I don't see why you confine that to the South.

Mr. McKINNEY. They can't sit down and talk in Boston.

Senator MATHIAS. But now what about the plan? Do you give him credit for the plan?

Mr. McKINNEY. I don't give him credit. I give him credit for conceiving the idea—

You all have been in court 14 years. The lawyers are getting all the money.

Our school board paid Lattimer—the name that you see on that suit there—\$60,000 in litigation fees in 1 year. And that wasn't his principal thing. He was an attorney fighting the schools.

He didn't ever want to get out of court. He stayed in court 14 years. He would never have wanted out—not at that kind of money. I know I wouldn't. [Laughter.]

Senator MATHIAS. You remind me of the fellow whose son graduated from law school and came back to practice law with him. He said to his son: "How did you do?" His son said: "Fine, I settled that old case that's been hanging around here for years." He said: "Oh, you didn't; that case is what I sent you to law school on."

Mr. McKINNEY. There were some fabulous sums.

You all have all kinds of aides up here. You know I'm coming up here next month myself. I'm taking Andy Young's place. [Laughter.]

Mr. McKINNEY. You've got all kinds of aides up here, and you ought to check how much money the Atlanta School Board paid attorneys fighting that case, and then check how much money the NAACP paid fighting that case.

And Judge Bell was instrumental in terminating it to the satisfaction of black people in Atlanta—not white people, because they continued to flee.

But now we are doing so good we got 400 of them to come back this year.

I conclude my remarks by saying this: If you don't like moderation, and if you don't like to create an atmosphere where black and white people can sit down and talk together, and if you're some flaming liberal and you say that's not what ought to be, then you are not going to do too much as far as getting black and white folks together. They aren't together yet in America, because they still aren't sitting down and talking.

And I am ready to get back to Atlanta. [Laughter.]

Chairman EASTLAND.. You have made a very fine witness. It's been very helpful.

Mr. McKINNEY. I just hope you all listen to what I say. I'm from the South.

Chairman EASTLAND. I've listened.

Mr. McKINNEY. I've never lived in the North a day in my life. We control Atlanta. And we're not going to let any New Yorkers come down there and tell us how to run it.

Senator MATHIAS. Stick to it. [Laughter.]

Mr. McKINNEY. I want to tell you something else about a couple of your witnesses who were here.

They are saying now that they got Jimmy Carter elected. But I worked for Jimmy Carter all during the primaries, and they didn't help to get Jimmy Carter elected.

I went in some of those districts—mainly in Baltimore and we were not welcome in Baltimore.

Senator CHAFFEE. Could I ask a question, Mr. Chairman?

Chairman EASTLAND. Surely.

Senator CHAFFEE. Are you catching a plane to Atlanta?

Mr. McKINNEY. I'll put it off. I've been here 3 days. I didn't even bring a toothbrush with me and no change of clothes. I believe I'm going to start stinking. [Laughter.]

Senator CHAFFEE. As I understand it, in your testimony you are stating that Judge Bell was a prime factor in seeing that the parties got together in this Atlanta plan?

Mr. McKINNEY. In the Atlanta plan and the Sibley Commission too.

The Sibley Commission is the most important thing that happened in the South during the time of Little Rock and all of this. You all have played down the importance of the Sibley Commission.

Senator CHAFFEE. Well, we get a lot of contrary—

Mr. McKINNEY. Let me tell you something.

Here is where you get a misconception. You read the wording of the resolution creating the Sibley Commission. You read this wording and say: Judge Bell drew up this, and this is racist.

In order to pass a resolution in the Georgia General Assembly, it had to be racist. And to get it signed by Ernie Vandiver, he couldn't draw up a resolution and—

Now you all are in politics. You know what I'm talking about.

The resolution drawing up the creation of the Sibley Commission, when you read it 15 or 20 years later, you'll say: My God. And realize that it had to pass a Georgia General Assembly.

Senator MATHIAS. How old did you say you were?

Mr. McKINNEY. I'm 49, going on 50.

Senator MATHIAS. You may remember a song, "It's Not What You Do, It's The Way That You Do It."

Mr. McKINNEY. I remember it very clearly.

Senator MATHIAS. Is that what you're telling us?

Mr. McKINNEY. That's what I'm telling you.

He had to word it that way in order to get it passed. And Ernie Vandiver had to sign it.

I mean that's the only way.

Do you know what I did this year? I passed liquor on Sunday in Georgia. They said it would never happen. I passed it.

Senator CHAFEE. What was the title of the bill? [Laughter.]

Mr. McKINNEY. We had some folks who have said I was a blasphemer for doing it, but I passed it. And I passed it with the cooperation of some people who really didn't know what it was. I said that it would be lawful to sell alcoholic beverages on Saturday night until 2:55. That's 2:55 a.m., Sunday morning.

So what the judge did—He had to do this. He had to write this resolution to get it passed, and he wrote it superbly. The man is a genius. And he got it passed.

Morris Brown College gave him a doctor of humanities degree. That was a baccalaureate, and then they had a \$100-a-plate dinner and awarded him Man of the Year for 1976 for the Sibley Commission.

So that is an indication that black folks in Georgia are proud of the Sibley Commission—as bad as it was.

We're proud of it.

Senator CHAFEE. That's the problem here. You were here when Mr. Rauh was testifying on the Sibley Commission and called it massive resistance. But despite all that, as you label it, as bad as it was it seems to have been well received, at least by you and by Mr. King and others.

Primarily it is not because of what it said, I gather, but because of the meetings which were held to bring the people together.

Mr. McKINNEY. Because of the dialog.

Every member elected that year in the general assembly and the Governor and Lieutenant Governor—Peter Zach Gill was one of the worst white folks in the world. And he was elected Lieutenant Governor. And he's worse than Ernie Vandiver.

So you had Vandiver surrounded by these people, and then you had some intelligent folks like Judge Bell.

So please put it back in its proper context.

And that's why I've stayed here 3 days. I have to go back to Atlanta and try to explain to them by absence.

You know that if you're absent from too many votes, then your opponent will say that you aren't taking care of business.

Senator MATHIAS. How is public broadcasting down there?

Mr. McKINNEY. It's pretty good. I get on television about twice a day.

Senator MATHIAS. Are they carrying this live now?

Mr. McKINNEY. I don't know. I doubt it seriously.

Senator MATHIAS. Your opponent will be looking for equal time at this rate. [Laughter.]

Mr. McKINNEY. I try to be an effective, pragmatic politician.

Senator CHAFEE. I would say those pluralities indicate you are quite successful.

Chairman EASTLAND. We will recess now until 9:30 tomorrow morning.

[Whereupon, at 7:05 p.m., the committee recessed.]

NOMINATION OF GRIFFIN B. BELL

FRIDAY, JANUARY 14, 1977

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 9:30 a.m., in room 2228, Dirksen Senate Office Building, Senator James O. Eastland, chairman, presiding.

Present: Senators Eastland, Kennedy, Abourezk, Riegle, Sasser, Thurmond, Mathias, Scott, Chafee, and Heinz.

Also present: Francis C. Rosenberger, chief counsel, and J. C. Argetsinger, David Dixon, and Britt Singletary, of the committee staff.

Senator ABOUREZK [acting chairman]. The Judiciary Committee hearings will resume.

The first witness this morning will be Roy Innis, Congress of Racial Equality, New York.

Is Mr. Innis here?

VOICE FROM AUDIENCE. Mr. Innis is on his way back to Washington and is not here now. He will be here shortly.

Senator ABOUREZK. Thank you.

Is Charlene Mitchell, executive secretary of the National Alliance Against Racist and Political Repression, here?

[No response.]

Senator ABOUREZK. Is Haywood Burns, National Conference of Black Lawyers, here?

[No response.]

Senator ABOUREZK. Is Brother Greene, spokesman for the Cypress Health and Safety Committee, here?

[No response.]

[Mr. Burns entered the hearing room.]

Senator ABOUREZK. Are you Haywood Burns? Are you ready to testify?

Mr. BURNS. Yes, sir.

Senator ABOUREZK. I would like to welcome you to the Judiciary Committee. If you are ready to proceed, please go ahead.

Mr. BURNS. Thank you very much, sir.

TESTIMONY OF HAYWOOD BURNS, NATIONAL CONFERENCE OF BLACK LAWYERS

Mr. BURNS. Mr. Chairman, my name is Haywood Burns. I appear on behalf of the National Conference of Black Lawyers to speak in

opposition to the confirmation of Griffin Bell as Attorney General of the United States.

We are pleased to have this opportunity to share our views with this committee, by extension, the people of the United States.

NCBL is a national organization of lawyers, law students, law professors, and judges. Our members are found in every major area of private practice, business, and industry, as well as in governmental service and office throughout the country.

The organization was born out of a concern for the need to use legal skills in the protection of the rights of racial minorities and the economically deprived for equal justice before the law.

It is in faithfulness to these founding principles that we are now compelled to oppose the nomination of Griffin Bell for Attorney General of the United States.

We find him to be fit neither in attitude nor ability for the high office for which he has been appointed.

Unlike many instances in the past in which there was meager evidence of legal performance in reviewing the credentials of a nominee for this position, here we have a rather replete record left through years on the bench and in State governmental service.

In discharging its constitutional duty, we ask that this committee look at that record and read Judge Bell's opinions, year by year. You will not find a distinguished legal talent or be overwhelmed by judicial scholarship.

You will find a record of obstructionism in preventing the realization of full civil rights for black Americans. This is particularly apparent in the area of school desegregation cases where Judge Bell was one of the primary architects of the fifth circuit court of appeals in opposition to meaningful integration in the public schools.

The pattern he established is one of attempting to blunt the mandates of the Supreme Court in this area, arrest their implementation and narrow their construction and meaning. The limited scope of the remedy he would permit and the narrow school by school desegregation approach served well the cause of delay.

Any ground given was given grudgingly and certainly not out of any evidenced understanding of or commitment to racial justice.

This juridical performance cannot be viewed in a vacuum, but must be seen against the backdrop of Griffin Bell's role as chief of staff to Georgia Governor Vandiver at the time of that State's announced massive resistance to school desegregation.

As a key aide and legal advisor to the Governor in this period, Mr. Bell played a crucial role in Georgia's segregationist stance, a stance that ultimately resulted in legislation to close the Georgia public schools rather than integrate them and his unequivocal official statements from the executive office endorsing a species of American apartheid.

NCBL is not prepared to dismiss these attitudes and actions as mere historical relics. They have great weight and relevance for the present moment.

For those, if any, who are disposed to do so, however, we point to more recent examples of Mr. Bell's record which are not inconsistent with the earlier versions of his conduct.

Most notable are his statements and actions in connection with his membership in racially exclusionary private clubs. It is not the fact of

membership alone in such clubs that concerns us, revealing as that is, but rather the manner in which Mr. Bell attempted to explain, justify and rationalize his membership and the verbal contortions and inadequate proposed solutions he went through before withdrawing from these clubs.

These portray an individual almost completely devoid of any moral sense of his racist acts or any appreciation of their enormity.

He tells us that these are clubs we would like to join if we lived in Atlanta, addressing himself presumably to the white and gentile public, since all others are automatically excluded.

He evinces more concern over the amount of dues he has paid out than over the seriousness of his having joined in the first place. He temporizes and he equivocates.

Maybe, he suggests, he could just suspend his membership rather than resign. After all, he allows, "I won't be in Washington forever."

All Americans, of whatever hue or station, should distrust this type of segregation of principles and the individual who would engage in it. Certainly any individual harboring these attitudes and engaging in these actions is not suitable to be the Attorney General of all the people.

In reviewing this aspect of Griffin Bell's record, as members of the legal profession we ask that this committee look into the possibility of judicial impropriety in connection with Judge Bell's participation in a recent fifth circuit court of appeals case which refused to apply Federal antidiscrimination law to a racially exclusionary private club.

We submit that it was highly improper for Judge Bell to participate in that decision while at the same time holding membership in a number of private clubs that had a racial bar to membership.

Limitations of time and resources prevent an even more extensive exploration of the record in the present context. We have only a short time to present our views to this committee, we had only short notice of these hearings due to the alacrity with which they were scheduled. We are not an organization of means.

This committee does have the time and the resources. Because of what is at stake, we implore you to give close, thoughtful and deliberate scrutiny to the record before you and resist any pressures for a hasty confirmation.

We ask that you be not beguiled by any protestations of future fairness that do not comport with the pattern of past performance. In particular are the promises of expanded participation of blacks in the Department of Justice under an Attorney General.

Griffin Bell must be placed alongside Judge Bell's and Attorney Bell's position on the expanded participation of blacks in American society. His reported commitment to place blacks in high level positions in the Department of Justice must also be linked with his recent statement of intention to reorganize certain aspects of the Department lest the proposal amount to blacks being given the semblance of power without its substance.

We are convinced that a fair reading of the record can only lead this committee to the conclusion we have already reached: Griffin Bell should not be the next Attorney General of the United States.

After the turmoil and travail of the 1960's in which this Nation struggled with its unfulfilled promise of justice, after the shame and

disgrace of the early 1970's in which so many of the excesses and abuses of governmental power were both revealed and confronted, we stand on the edge of a new moment, filled with possibility and promise.

That moment must be seized. So many Americans, black and white, think that there is new reason to hope. The nomination of Griffin Bell gives lie to the promise, diminishes the hope.

The time and the people require for this office a woman or man of wisdom, judgment, demonstrated commitment to change and breadth of vision of justice. Griffin Bell is none of these.

We urge your rejection of this nomination.

Thank you, Senator.

Senator ABOUREZK. Thank you.

Mr. Burns, I have just a couple of questions.

Mr. BURNS. Yes, sir.

Senator ABOUREZK. I want to ask you first of all how do you feel about President-elect Carter's position on civil rights?

Mr. BURNS. President-elect Carter's position on civil rights?

Senator ABOUREZK. Yes.

Mr. BURNS. I am speaking on behalf of my organization. It has not taken any position with regard to the President-elect's position on civil rights.

I personally feel that the President-elect has indicated a very progressive, forward-looking position on civil rights.

I do not feel that has always been matched by actions, however, one of the actions being the appointment of Mr. Bell.

Senator ABOUREZK. There is quite a split in evaluating Mr. Bell's record when he worked for Governor Vandiver and his opinions when he was on the bench. One witness yesterday commented that his opinions were in pace with existing law. They did not get out in front of it necessarily, but—

Mr. BURNS. I would not accept that characterization.

Senator ABOUREZK. I am quoting a witness. I have not read all his opinions.

Mr. BURNS. I have not either, I'll be frank to say that.

Senator ABOUREZK. Mr. Bell has said here that he believes that blacks in this country and other minorities will not be disappointed in his tenure if he is confirmed as Attorney General.

So with all of this in mind, do you think, with Governor Carter's direction in civil rights, and with Mr. Bell working for Governor Carter, that it is possible for him to be able to change?

Mr. BURNS. I think that Mr. Bell, if he is confirmed, will be working for the American people but not for—

Senator ABOUREZK. Be working for whom?

Mr. BURNS. For the American people, and I don't believe that we can think of it as a job that he is doing for Mr. Carter.

Senator ABOUREZK. But he will be following the broad policy guidelines set down by President Carter.

Mr. BURNS. Hopefully he would be; yes.

Senator ABOUREZK. I think I have a great deal of confidence in Governor Carter's direction in that regard as I think you might as well.

Then is it possible, do you think, for Mr. Bell to be able to change, to grow and to mature in this area, with the guidance from President

Carter, and with the hearings that we have had here, with their very dour predictions that people have laid on him, in mind?

Mr. BURNS. Senator, I believe it is possible for human growth. I would be a real pessimist and cynic if I did not believe that.

I believe that there is possibility for human change. However, I think that we are at a time when we cannot afford risk. We know from past performance that Mr. Bell was in a situation where he should have been following mandates from higher authority in the past.

Our view of the record is that he did not always do that in a way that was commensurate with the full realization of the rights of the people. When we see the way in which he has performed in the past, I am not of the opinion that we can afford to take that risk at this time in this country.

Senator ABOUREZK. Senator Mathias, do you have any questions?

Senator MATHIAS. I want to thank you for being here. I have had an opportunity to read your statement and regret I was delayed in getting here at the time you began to testify.

In your statement, you say that Judge Bell was one of the primary architects of the Fifth Circuit Court of Appeals in opposition to meaningful integration of public schools.

One of the dangers which Judge Bell and I have discussed across the table here, one of the dangers is that we take one or two cases out of the large body of case law and we say: These are mistakes, these are errors, these are things which the Supreme Court later reversed, and perhaps put too much emphasis on those few instances in which a judge has made a wrong decision where he may have made a great number of correct decisions.

So when you make the statement which you do, is it on the basis of a few cases to which you object or is it on a broader base?

Mr. BURNS. It is on a broader basis, Senator. I would say in all candor that given the shortness of time, the deadline that we have, we have not been able to read every case that was cited or in which Judge Bell sat as a member of a panel in 15 years.

But we were able to review his performance over the years in the area of civil rights and we see a pattern and practice emerging from that which we believe is to delay the full realization of rights for black people in this country.

The Senator from South Dakota asked me just a few minutes ago about following mandates, directions, and guidance. It is not just what you do but, as we said yesterday, how you do it.

I think the way in which the mandate of the higher court was interpreted and carried out, systematically, was one of gradualism, was one of delay. It was not as if Judge Bell came out consistently and vociferously for segregation. I don't think that he could have done that. It was at a time when the law would not have permitted that.

But in implementing what the Supreme Court had said and trying to desegregate the schools, I believe that you can look at a pattern of opinion over a period of years and see a kind of intransigence, a kind of delay, a kind of obstructionism which we should not abide.

Senator MATHIAS. In making this comment, I assume that you are dealing primarily with the school desegregation cases?

Mr. BURNS. I am, sir.

Senator MATHIAS. What about other aspects of Judge Bell's record as it relates to functions of the Justice Department such an antitrust and the FBI and the myriad other responsibilities of an Attorney General which impinge upon the daily lives of various citizens?

Mr. BURNS. That is certainly true. We have not made a study of his antitrust opinions. We have not made a study of his environmental or ecological opinions. We have not made a study of his opinions in the area of women's rights. We know very little about his opinions in the area of selective services cases, other than the *Bond* case.

Principally we have been concerned with impact of his appointment upon full realization of rights of the minorities and, by extension, all people in this country because we are talking about the same Constitution for everybody.

I would say, Senator, that in the course of these hearings you will hear from other individuals and other organizations that have had an opportunity to make the kind of survey to which you allude.

We could not take on that burden. Further, we feel that should he be found wanting in this particular area that is dispositive of the question, that there is no need to talk about how good he would be in antitrust if he does not have the kind of commitment, the kind of ability, the kind of attitude that will assure to all people in this country equal justice under the law.

Senator MATHIAS. One other question. I personally have been very much interested in the Voting Rights Act since it was first enacted. I believe that it has made a significant difference in this country.

Mr. BURNS. I believe it did, too, sir.

Senator MATHIAS. In your review of Judge Bell's record, did you find any action in this area of voting rights legislation?

Mr. BURNS. I found none. I do not know whether any exists. Just so the record is clear, I would say that in the space of time which we were given to prepare our testimony and come to this committee, it may be that some cases exist which were not found.

But I am talking on the basis of the record as I referred to it previously. He may have a volume of opinions in this area and, if the committee is interested in having us pursue it, I am sure our organization is prepared to submit a memorandum on that question.

Senator MATHIAS. There has been some discussion in these hearings of having what is known as a merit system for the appointment of judges.

Do you personally or does your organization have any views on that approach to the problem of manning the Federal bench?

Mr. BURNS. I have not been authorized to take an organizational position but as an attorney and as a practitioner of law I would say that, as I understand the question, I am a person who believes in the merit system for the appointment of judges.

Senator MATHIAS. If we can define merit.

Mr. BURNS. If we can define merit, yes.

Senator MATHIAS. Thank you, Mr. Chairman.

Senator ABOUREZK. Senator Chafee?

Senator CHAFEE. I have no questions.

Senator ABOUREZK. Mr. Burns, thank you very much for your appearance and for your testimony.

Mr. BURNS. Thank you, Senator.

Senator ABOUREZK. We will give the out-of-town witnesses who have been here for 2 or 3 days a chance to testify before intown witnesses who may be ahead of them on the witness list.

If this creates a problem, if a Washington, D.C., witness had made plans to get out of town, please say so.

Mr. Cohen?

Mr. COHEN. I'm not from out of town but it is a question of a nominating committee meeting which is being held in our organization.

Senator ABOUREZK. Then you are next, if you are prepared.

Senator MATHIAS. He is always prepared.

Senator ABOUREZK. The witness following Mr. Cohen will be Brother Greene if he is here.

Then we will have Charlene Mitchell.

You will be called in that order.

TESTIMONY OF DAVID COHEN, PRESIDENT, COMMON CAUSE

Mr. COHEN. Mr. Chairman, thank you for permitting me to testify. I am being accompanied today by Kenneth Guido who is our general counsel and I have been present at these hearings because they are so fundamental to law and fairness in our system.

This is indeed the first time this committee, I think, has taken the hearing of the confirmation of an Attorney General—

Senator ABOUREZK. There will be order in the hearing room.

I ask that there be quiet in the hearing room. It is difficult to hear Mr. Cohen.

Mr. COHEN. It is the first time that the hearing of an Attorney General nominee and designee has been taken so seriously. That is not to say that your work is done and I hope that I will demonstrate that during the course of my testimony.

I have been here because I wanted to hear the give and take not only between the witnesses and you, the Senators, but between Mr. Bell and the Senators.

What I would like to do if I may, Mr. Chairman, is to submit my statement for the record and to summarize it and try to amplify on some additional points.

Senator ABOUREZK. It will be admitted.

Mr. COHEN. Thank you.

[Mr. Cohen's prepared statement follows.]

TESTIMONY OF DAVID COHEN, PRESIDENT, COMMON CAUSE ON THE NOMINATION OF GRIFFIN BELL TO BE ATTORNEY GENERAL

Mr. Chairman and Members of the Committee, I appreciate the opportunity to testify today for Common Cause at the confirmation hearing of Griffin Bell to be Attorney General.

I

We are here to raise issues that concern the responsibility of the Judiciary Committee during these confirmation hearings and suggest questions that we believe Mr. Bell should address before his nomination comes to a vote.

The confirmation process is an essential part of Congress oversight responsibility with respect to the Executive Branch. The confirmation process presents more than an opportunity to evaluate the qualifications of nominees. To be used well it should examine an appointee's views on matters of departmental openness and accountability as well as important substantive issues that focus on the Department's statutory responsibilities.

Unfortunately, the Senate for too long has served as an instant ratifying processor for Cabinet appointments. Hearings too often are perfunctory. Efficiency and speed serve as excuses to avoid effective scrutiny and oversight. Little is learned and an adequate record is not developed; the public is effectively shut out.

The Senate confirmation procedure tests the Senate Judiciary Committee as much as it tests Griffin Bell. Will an overwhelmingly Democratic Senate superficially examine President-elect Carter's Cabinet appointments or will appointments be reviewed with care and deliberation? The office of Attorney General merits special attention. Respect for the rule of law must be a fundamental practice in a democracy. The mission of the Attorney General is to enforce our laws fairly and equitably, and to protect the constitutional rights and liberties of all Americans.

The Attorney General has the highest responsibility for assuring the public that all citizens will be treated the same under law. Unfortunately, two of our most recent Attorneys General—John Mitchell and Richard Kleindienst—stand convicted of violations of federal law. If confirmed, Mr. Bell has the paramount responsibility to take the necessary steps that will restore public trust in the office of Attorney General. The Senate's role is critical. As the American Bar Association, through its Special Committee to Study Federal Law Enforcement Agencies, pointed out: "The responsible exercise of the Senate's constitutional obligation to advise and consent is central to renewing our national faith in the administration of justice."

The Senate Judiciary Committee must not shirk responsibility. It has to learn as part of the confirmation proceeding what specific steps Griffin Bell will take to assure that neither politics nor favoritism has any place in the administration of justice.

Common Cause urges the Committee to develop a full and substantive record for consideration by the Senate and the public. This means that before the Committee votes Mr. Bell should be brought back to answer questions unanswered in the first round. It means preparing a detailed report on the Bell nomination and making it available to Senators and the public at least 72 hours before the Senate begins floor consideration of the nomination.

Mr. Chairman, in order to help the Committee develop a full and substantive hearing record on the nomination, we have set forth those areas of concern that Common Cause believes Mr. Bell should address. We will focus on four essential tasks that face the next Attorney General:

- removing politics from the administration of justice;
- instituting merit selection of Judicial and Justice Department appointments;
- avoiding conflicts of interest;
- ensuring public access to the courts.

II

REMOVING POLITICS FROM THE ADMINISTRATION OF JUSTICE

Common Cause believes that the Attorney General's political activities must stop while serving in that office. The Attorney General should not be a political advisor to the President. Mr. Bell should agree not to be involved in party, candidate and other political strategies while in office. Furthermore, Mr. Bell should pledge not to engage in 1978 or 1980 election activities.

The Senate demonstrated its sensitivity to removing politics from the Justice Department last summer when it adopted Senator Bentsen's amendment to the Watergate Reorganization and Reform Act of 1976 that would have prohibited appointment of a high level campaign figure as Attorney General or Deputy Attorney General.

Common Cause believes that Mr. Bell should be asked to detail his political relationship with President-elect Carter, including his role in the Presidential campaign and the transition. What, if any, campaign activities did Mr. Bell perform in the Carter election effort? Was advice given on issue positions? Were speeches drafted? What, if any, Presidential campaign fundraising did Mr. Bell engage in? If the answer is yes, from whom were the funds raised and when? Who approached and contacted Mr. Bell about serving as Attorney General? When did discussions about Presidential campaign activities or a role in a Carter Administration first occur? The Senate and the public are entitled to have answers to these questions.

In an August 11, 1976 address to the American Bar Association in Atlanta, Presidential candidate Jimmy Carter said, in part: "But following the recent presidential elections our U.S. Attorney General has replaced the Postmaster General as the chief political appointee, and we have on recent occasions witnessed the prostitution of this most important law enforcement office * * * *As much as humanly possible the Attorney General should be removed from politics,* and should enjoy the same independence and authority and should deserve as much confidence as did the special prosecutor during the last few weeks of the Watergate investigations." (emphasis added)

Common Cause believes that Mr. Bell should be asked whether he agrees with Mr. Carter's statement quoted above and what he thinks that the statement means in terms of his administration of the Department of Justice.

The path between the Department of Justice and the White House is not a one way street. In addition to the problem of political advice flowing from Justice to the White House, we have witnessed the abuse of political pressure being applied on the Department by the White House. The ITT case is a classic. But more subtle problems occur with frequency. It is a difficult but essential task for the President and the Attorney General to work out a proper arrangement that protects the President's ability to establish national priorities in the areas of law enforcement and the administration of justice without allowing the President to interfere with Attorney General's job of vigorous and impartial law enforcement. There should be a strong presumption against White House interference in specific cases.

The 1974 Report of the Watergate Panel of the National Academy of Public Administration recommended:

"The Panel recommends that generally the President, his staff, the Executive Office, and the heads of executive agencies refrain from participating in cases involving individuals or specific institutions, but rather concentrate on the policies and criteria governing such cases and rely upon the operating agencies to apply them.

"In those few cases where top executive involvement is required, the Panel recommends that a record be maintained."

Mr. Bell should be asked to describe the proper relationship between the President and the Attorney General on matters of policy and on specific cases and the steps that he will take to protect against improper interference from the White House.

The free and unchecked flow of political advice and pressure between the Department and the White House must be checked.

The 1974 Report of the National Academy of Public Administration Panel, the 1975 Report of the Watergate Special Prosecution Force, and the ABA's Special Committee To Study Federal Law Enforcement Agencies all called for improvements in existing Department regulations requiring certain Department personnel to log their contacts with outside parties.

Mr. Bell should be asked in what ways he intends to buffer the Department of Justice from White House pressure through improvements in existing Department logging requirements. Will Mr. Bell agree to promulgate an order that requires a public log of communications to or from the White House, the Executive Office, and the Congress that refer to any case or matter in the Department? Mr. Bell should pledge that he and his Deputy Attorney General will log and make public all of their phone contacts and office meetings on Departmental business.

Revelations in recent years have demonstrated countless abuses of the political process and of the civil rights of our citizens by the Federal Bureau of Investigation. Mr. Bell should be asked to pledge to seek a legislative charter for the FBI to spell out its jurisdiction, the methods it is authorized to use, and the conditions under which it may use them.

The Department of Justice has a sorry history of nonenforcement of crimes of political corruption. President-elect Carter has endorsed legislation that would trigger the appointment of a temporary special prosecutor to ensure impartial enforcement where the target of the investigation is a high level government official and he has stated that it would be a legislative priority of his Administration.

Mr. Bell should state his views on the Justice Department's priority of dealing with crimes of political corruption and other forms of corruption. Mr. Bell should be asked his position on the legislation to establish a Special Prosecutor and

whether he is willing to make passage of this legislation a personal priority. Further, Mr. Bell should be asked if he favors upgrading and giving statutory authority to the existing Public Integrity section of the Department as was done in the Senate-passed Watergate Reorganization and Reform Act of 1976.

III

MERIT SELECTION OF JUDICIAL AND JUSTICE DEPARTMENT APPOINTMENTS

In a campaign paper on federal judicial reform, candidate Carter stated :
 "All federal judges and prosecutors should be appointed strictly on the basis of merit without any consideration of political aspect or influence. We can no longer afford to treat the administration of justice as political patronage. Even the ability to meet minimum standards is no longer enough ; we must search out the very best. Independent, blue ribbon judicial selection committees should be established to give recommendations to the President of the most qualified persons available for positions when vacancies occur."

Mr. Carter repeated his commitment to the merit selection of judges throughout the campaign, including a strong statement during the third debate between the Presidential candidates.

Congress will soon create a large number of federal judgeships. It is possible that President Carter will name almost one quarter of the federal judiciary in his first year in office. If the past is a guide, political log rolling and Senatorial courtesy will dominate the process. The blue slip system, which permits Senators to veto unwanted judicial appointees in their states, allows Senators to play politics with the judicial branch. Minorities and women have been squeezed out in this political process. There are only twenty-one blacks and six women in a federal judiciary of approximately 500.

Mr. Bell is intimately familiar with the present process. A recent issue of *Judicature*, a publication of the American Judicature Society, quotes Mr. Bell on the background to his appointment to the federal bench : "For me, becoming a federal judge wasn't very difficult. I managed John F. Kennedy's presidential campaign in Georgia. Two of my oldest and closest friends were the two Senators from Georgia. And I was campaign manager and special, unpaid counsel for the governor. It doesn't hurt to be a good lawyer, either."

Mr. Bell should be asked whether politics or merit should be the basis for federal judicial appointments. Will he advocate establishment of a non-partisan national judicial selection commission to recruit and recommend to the President potential nominees for federal judgeships at the district and appellate levels? What steps will be taken to ensure the merit selection of U.S. Attorneys? What steps will be taken to prevent wholesale dismissal of U.S. Attorneys because they are Republican? What does Mr. Bell consider to be the proper role of U.S. Senators in this selection process? Will Mr. Bell oppose a system of Senators submitting a single name to the Justice Department for district and appellate judges? What standards would he recommend in the selection of federal judges and prosecutors? Further, Mr. Bell should be asked what steps he will take to ensure a marked increase in the number of judicial appointments for minorities and women.

It is essential that the top positions in the Department of Justice be chosen with great care and sensitivity. Mr. Bell should be asked what criteria he will use in selecting people to fill such important posts as Deputy Attorney General, Solicitor General, Assistant Attorney General, and Director of the Federal Bureau of Investigation.

IV

AVOIDING CONFLICTS OF INTERESTS

President-Elect Carter has established the restoration of public trust in government as a prime goal of his Administration. His recent statement on conflicts of interest and ethics is a major and welcome advance toward this goal. Nevertheless, it is essential that this Committee develop a full record on Mr. Bell's views and plans on conflict of interest.

Mr. Bell's financial disclosure statement, along with a complete description of all actions he will take to comply with Mr. Carter's ethics guidelines, should be made a part of this hearing record. This should include a description of Mr. Bell's severance agreement with his law firm, King & Spalding. Mr. Bell should be asked to pledge to serve a full four year term and should be asked

whether he has any understanding with King & Spalding regarding his future employment with the firm. Mr. Bell should provide the Committee with a list of all corporate, business, and other institutional clients of King & Spalding. Mr. Bell should be asked to describe the criteria he will use to determine when it is appropriate for him to withdraw from a matter before the Department because of possible conflict of interest with clients of his former law firm or personal interests. At a minimum, Mr. Bell should be asked to withdraw from any matter involving King & Spalding.

The Attorney General is not only responsible for ensuring that he is personally free of conflict of interest, he has government-wide responsibility in this critical area. It is essential that tougher financial disclosure and conflicts of interest laws be enacted and that they be rigorously and fairly enforced. Mr. Bell should be asked what improvements in conflict of interest laws and their enforcement he would propose or support.

V

ENSURING PUBLIC ACCESS TO THE COURTS

A recent study by the Corporate Accountability Research Group documented 897 instances between January of 1971 and August of 1974 when a federal court of appeals found that a federal agency acted unlawfully—this is about one case a day. Simultaneous with this massive governmental illegality the Supreme Court has narrowed citizen access to the courts to challenge government illegality. A recent statement of the Board of Governors of the Society of American Law Teachers found that the "Supreme Court is making it harder and harder to get a federal court to vindicate federal constitutional and other rights."

While a member of the Court of Appeals for the Fifth Circuit, Mr. Bell wrote opinions restricting public access to the courts. His opinions stand in obvious contrast to President-Elect Carter's campaign promises to work for "expanded class action rights; broadened definitions of legal standing; funding of public interest law."

Because of the apparent conflict between the views of President-Elect Carter and Mr. Bell, it is essential that Mr. Bell be asked what proposals he will make with regard to public access to the courts, attorney fees, class action suits, and standing requirements. Further, Mr. Bell should be asked what guidelines his Department will use to determine when the Department will challenge the standing to sue of public interest litigants.

The five areas we have focused on are but a sample of the important issues that the Committee must raise with Mr. Bell in order to satisfy its constitutional obligation under the advise and consent clause. Other significant areas of inquiry will be developed by the Committee and by other witnesses. It is essential, for example, that the Committee develop fully Mr. Bell's record in the areas of civil rights and civil liberties. Among Congress' greatest democratic achievements are the 1964 Civil Rights Act, the 1965 Voting Rights Act, and the 1965 Fair Housing Act. Mr. Bell must be asked to commit himself to the vigorous enforcement of these fundamental laws. Mr. Bell must be asked to give a high priority to the prosecution of white collar crimes and to recommend severe penalties for convicted offenders. In order to fulfill President-Elect Carter's campaign promise of an open Administration, Mr. Bell should be asked to pledge vigorous enforcement of the Freedom of Information Act. All of these issues are a high priority since all-out enforcement will build respect for impartial enforcement of the law. The Committee should determine whether or not they are of high priority to Mr. Bell.

Common Cause urges the Committee to insist that Mr. Bell respond to our suggested questions before voting on his confirmation. It is essential that the Committee develop a full and substantive hearing record and make public a written report as means of establishing Congressional oversight over the Department of Justice and restoring public confidence in the impartial administration of justice.

Thank you.

Mr. COHEN. These hearings are as much a test for the Senate Judiciary Committee as they are for Mr. Bell. I would like to talk first a little bit about what the standards of the confirmation process should be.

I start with the assumption that, on Cabinet appointments, the President should have the widest latitude in contrast to appointments to regulatory agencies and the courts. The fact is that Cabinet appointments have had a perfunctory hearing process with perhaps only two exceptions in modern times, Lewis L. Strauss and Walter J. Hickel.

The Senate has fallen down on the job and no Attorney General has ever been given serious treatment. More than any post, the Attorney General's post is fundamental to the question of integrity and fairness of our system.

It is a preeminent appointment and one that deserves the closest kind of review.

The Attorney General has a two-part role. The Attorney General is a member of the administration on policy matters that relate to the law and the Constitution. The Attorney General is also the chief law officer of the United States. Sometimes the two roles can conflict.

The Attorney General's role is to give the perspective of the chief law enforcement officer and, in a very real sense, to be the legal and constitutional conscience within the administration.

That is why there has to be the highest standard of review even when there is no controversy on the appointment. It has to be done with the most care and deliberation.

The Attorney General has to be somebody more than somebody the President trusts. It has to be somebody who can show that he or she is a person of independence, with a record of independence as a lawyer, a leader, and not merely a technician.

If we had to describe in a sentence what the ideal Attorney General might be, I would argue it would be a lawyer whose public record is one of impeccable credentials and who is a lawyer of national distinction.

I do not say that has to be the standard for confirmation, but when there is controversy, when there is argument, the care and deliberation that this committee takes has to be even greater.

When there is no controversy, what the Senate is really doing when it confirms is sanctioning the appointment, but when there is controversy, the disputes have to be looked into, the record has to be put together independently by the Judiciary Committee.

When there is controversy and dispute, it increases the responsibility of the Senate Judiciary Committee. It places on each of you, each of the members of the Senate Judiciary Committee, the responsibility that then is shared with the President-elect for the quality of the appointment.

When there is serious dispute, the committee is more than sanctioning. You have the affirmative responsibility of approving the record of the nominee, and the burden shifts—the burden shifts to you, the Senate Judiciary Committee, to question, to probe, to find out.

We all know that respect for the rule of law must be a fundamental practice in a democracy. We all know that the mission of the Attorney General is to enforce our laws fairly and equitably and to protect the constitutional rights and liberties of all Americans.

We are all familiar with the Mitchell and Kleindienst results, two Attorneys General convicted of violation of Federal law. We all know that, if confirmed, Mr. Bell has the paramount responsibility to take

the necessary steps that will restore public trust in the office of Attorney General.

You, as members of the Senate Judiciary Committee, will be shirking your responsibility if you vote to confirm Mr. Bell without knowing what those steps are that Mr. Bell will take to assure that neither politics nor favoritism has any place in the administration of justice.

I think the fundamental question before you is, really, how do both Mr. Bell and President-elect Carter sort out the differences between being the citizens' lawyer—lawyer for the citizens of the country—and being a member of the administration?

I would suggest that in fairness to the American people, because the Attorney General's post is so fundamental to integrity and fairness, in fairness to your own constitutional responsibilities, and in fairness to Mr. Bell, the committee, before it votes on the nomination, should bring back the nominee to answer questions that have been unanswered in the first round and that the committee should take steps to try to find, independently, evaluations of some of the key points that are in dispute.

It means that before you report the confirmation to the Senate, and we take the view that any President's nominee for a major office should be decided by the whole Senate so if a majority of this committee were to oppose Mr. Bell we would argue that that should still be decided by the whole Senate. As the majority, you can issue a report that you reject him.

But the point is that you need to make a detailed report on the Bell nomination stating the reasons why you are for him or why you might be against him. You have to make it available to the Senators. In advance, 72 hours in advance, would be fair, before the Senate begins floor consideration of the nomination.

Senator ABIOUREZK. Is that not pretty routine? We have always done that.

Mr. COHEN. Senator Abiourzck, generally speaking there have been committees in this Congress that have not done reports. I can tell you that on the Secretary of the Interior, until the Hathaway nomination, the Senate Interior Committee had not done reports on the Secretary of the Interior. That is true of other committees, as well.

I am saying that standard is an important standard to follow and the report has to be defensible. That is why I think Mr. Bell ought to be called back.

I think it is important to do this in a deliberative process. We are all familiar with the fact that sometimes nominations are done over the telephone. There is such a thing as a telephone poll. That just won't cut.

There ought to be a meeting and it ought to be as open as this meeting and Mr. Bell's nomination ought to be discussed with the kind of care that it deserves in fairness to him and in fairness to everyone else.

I would like to discuss, having finished with some of the procedural aspects, some of the key follow-up points that we see in our own testimony.

The start was removing politics from the administration of justice. I would hope that all of you would take a look again at the Benson amendment to the Watergate Reorganization and Reform Act of 1976

which passed this body overwhelmingly. In fact, as I recall only five Senators voted against that bill.

The Benson amendment would have prohibited appointment of a high level campaign figure as Attorney General or Deputy Attorney General.

I do not know yet whether Griffin Bell is a high level campaign figure. I do know this, that as a result of your questioning it is wholesome that he has said that he would not participate in election campaigns in 1978 and 1980.

That is the kind of standard that we have applied in the past for the Secretary of State. It is only right that it apply to the Attorney General.

I do know that he acknowledged being an advisor on some major campaign speeches including the major speech that President-elect Carter gave before the American Bar Association on the administration of justice.

He also said he was a campaign contributor and since one can give only \$1,000 I don't view that as a mark against and I don't want anything I say about that to be viewed that way.

But he also said that he raised money. We all know that money is central to politics. He raised that money before the Pennsylvania primary.

If this committee pursues this inquiry properly, it will find out from Mr. Bell from whom he raised the money, who was asked, who gave. Interest groups? Individuals? I think that is an important follow-up question and I think we are all entitled to know the answer.

We said that we believe Mr. Bell should be asked how he would describe the proper relationship between the President and the Attorney General on matters of policy in specific cases.

What we are dealing with here is the terrible memory of the ITT case which is the classic White House interference.

We would argue that for vigorous and impartial law enforcement, there should be a strong presumption again White House interference in specific cases.

I would like to make another suggestion. This comes out of listening to the hearings. When Elliot Richardson was before this committee, this committee did an excellent job of working out with him a formal statement by Mr. Richardson as a matter of policy on the relationship of the Special Prosecutor to Richardson's tenure and stewardship as Attorney General.

I would say it is important to understand what the relationship is between the Justice Department and the White House that Mr. Bell and President-elect Carter ought to work out a formal statement as to just what they understand that relationship to be. That should happen before this committee votes on Mr. Bell.

I was pleased with the pursuit of this committee, by some of the questioners, of the matter of logging, and I was pleased with Mr. Bell's answers, but I was not sure of one thing. Mr. Bell is absolutely right, it is the best defense for a public official to maintain a log. It is important that that log be public, that it not only be available to you, but that it be available to press, to media, to citizens, that it be available in a handy place on a periodic basis. I think that question should be followed up.

Senator ABOUREZK. Mr. Bell said that it would be public, if I recall, during his testimony.

Mr. COHEN. Then I did not hear it completely. That is very welcome.

Senator ABOUREZK. The record will show whether he did or not, but I am sure I heard him say that.

Mr. COHEN. If he said it, that is welcome, and if he did not say it I am counting on you gentlemen to follow that question up.

Senator MATHIAS. I think what he said was he would maintain the Richardson logging practice and intended to strengthen it and improve it.

Senator ABOUREZK. But I did hear him say he would make it public, or I thought I heard him say it.

Mr. COHEN. OK.

One area I did not hear any discussion of was the question of the upgrading and giving of statutory authority to the existing Public Integrity Section of the Department of Justice as the Senate did in the Watergate Reorganization and Reform Act of 1976.

I think that is an important part of the Justice Department. Attorney General Levy made an important addition by including it and make it a part of the Justice Department. It is working. It is time to give it statutory authority. We ought to have the views of Mr. Bell on that matter.

I would like to say a word about merit selection of judicial and Justice Department appointments. The move on the circuit court appointees is welcome. Admittedly, merit is a difficult question and we are all familiar with the fact that minorities and women are severely underrepresented in the judiciary.

But I was understanding of Mr. Bell's hesitancy to apply this to the district court situation, although we all know the district court is where the facts are found and that is a key court.

In the real life of people, it is the key court.

I understand his hesitancy because you are all pretty powerful on judicial appointments, especially those of you who are Democrats in this Democratic administration.

So in a real sense the lead ought to come from you. I have no illusions about that so we are going to work to add to a bill that you will be considering very promptly, the expansion of the judiciary, a system of merit selection.

I think the Senate ought to be tested. Where does it stand on merit selection? We will be working to lobby that in the judicial extension bill.

It will also test the administration-to-be as to whether they will—in their eagerness to have these appointments to make and accommodate the Senate—whether they will mean what they say about merit selection.

Your rule of nongermaneness is a very welcome rule and we are going to work at testing that rule, at testing the Senate, at testing the administration.

Merit selection is important. It is not inconsistent with bringing women and minorities on the bench. It is very consistent with this. It is very consistent with reaching out and seeing whether members of the public interest bar and those who have had some experience in practicing in public interest law can also be part of the Federal judiciary.

Senator MATHIAS. If you are going to do this, you better do it fast because the logs are rolling.

Mr. COHEN. I hear you, Senator Mathias. I would like to submit for the record at the end of my testimony a description of what we view as a good merit selection system. It is something short, and it will not take up much space in the record.

Is silence assent to submitting our points on the merit selection of judges?

Senator ABOUREZK. Go right ahead.

Mr. COHEN. Thank you.

Mr. COHEN. I really understand Judge Bell's point about not wanting to name who his appointees would be. I think he is absolutely right about wanting to stand on his own record in terms of confirmation.

I do think it would be very useful if he gave us some clues as to criteria for the various Assistant Attorneys General and other major appointments. I think that in no way would diminish his own proper desire not to name his appointees in advance.

I think it would only be right for the committee to pursue that with Mr. Bell.

If I may, I would like to deal with the question of conflicts of interest. I would like to start off by saying that the President-elect's order is clearly an excellent one. It does not solve all problems. One does not have to agree with every jot and tiddle to say that.

I think Mr. Bell's own statement to this committee is an enormous and significant step for objective criteria and certainly beyond anything that was ever done before.

Nevertheless, I think there are some things that need following up on. The first is there should be a description of Mr. Bell's severance agreement with his law firm.

The second, Mr. Bell should provide the committee with a list of the various institutional clients. I am talking about the corporate, the business, the other clients of the firm.

No one is interested in the individual clients. No one wants to know about divorce cases or criminal cases or any thing else, but I think the public is entitled to know about corporate business and other institutional clients.

I also think it would be helpful in Mr. Bell's eight-part statement if he would give us some more clues on point eight in which he defined the regular clients and talked about substantial financial contributions to the gross fees to King and Spalding on a regular basis in which he is talking about items that he might withdraw from.

I think it would be helpful, following your own standard of financial disclosure dealing with sources and categories of amounts of income, if he gave us a gross dollar figure just so we would have a clue.

I think that is important. That is in the spirit of openness. I do not think it invades any privacy questions.

In closing, I want to say one word about civil rights, clearly a high priority of the Justice Department. Mr. Bell clearly gave reassurances on policy matters. This is clearly something that troubles a lot of people in the past record, at least as seen by a lot of people. It is also a question of how independent Mr. Bell has been as a lawyer.

I think it would be very useful if this committee were to look at the transition documents which, after all, are public. As you and I know, part of what the transition documents do is suggest approaches to organization of the Justice Department, key early decisions that have to be made. The committee should have some dialog with Mr. Bell on that to really begin to help surface out what some of the key civil rights issues are.

That could apply to other parts of the Justice Department, as well, antitrust, other things, the Public Integrity Section. I think because there is so much concern, genuine concern, there is a preeminent responsibility upon the committee to do at least this on the civil rights question.

I would hope that before you vote on this nomination that again, in fairness to the American people, in fairness to yourselves as members of the Senate Judiciary Committee, and in fairness to Mr. Bell, that he be brought back, that he be questioned again, that we not try to do an efficiency approach in confirmation for the post of Attorney General.

It is too important to be done hurriedly, much too important. Take your time. Act deliberately. Don't filibuster. No one is suggesting that, but do it right.

Then I think everyone will have a lot more confidence and respect for your own judgments and you will have met your own affirmative responsibilities.

Thank you.

Senator ABOTREZK. Thank you very much, Mr. Cohen.

I want to express my thanks for some of the suggestions you have made. I think that they will be taken seriously. I cannot speak for all the committee but at least for one of the members of the committee.

Senator Mathias, do you have any questions?

Senator MATHIAS. You referred to the question of Judge Bell's severance agreement with King and Spalding. He stated to the committee that his agreement was that he would take no equity out of the firm and that he would have no understanding of any right to re-enter and that was all it was. You do not find that satisfactory?

Mr. COHEN. I find that satisfactory. I think we learned a lot under the Richardson precedent. That sounds to me like a three-part, three-sentence, or three-paragraph statement. It ought to be part of the record.

I think it is important to do some things formally, and I think it would be healthy to do that.

One thing that is not clear, and I meant to mention this in my testimony, is that under the Carter order financial disclosure statements ought to be public.

I think it is important that this committee, when it receives the financial disclosure statement of Mr. Bell, make that public. I certainly think the committee ought not to do anything in terms of confirmation until an elementary item like that is received and put together.

Senator MATHIAS. May I inquire of the Chair, do we have it yet?

Senator ABOTREZK. I do not know if we have it. I will have to ask the staff director.

Senator MATHIAS. One of the difficulties of this hearing, it seems to me, is that there has been so much emphasis on the civil rights ques-

tion, which is of great importance obviously, that we really have not touched upon other areas which are perhaps equally important to the structure and fabric of the American economy and the American society in the future. Do you have any feeling about that?

Mr. COHEN. We do, and I think that is why we urge further pursuit.

I am not asking that Mr. Bell give detailed policy answers that are equivalent to Presidential message on policy, but I think the purpose of these hearings is in part to make a judgment on Mr. Bell and in part they are highly useful educational procedures to all of us including Mr. Bell.

That is one of the reasons he ought to be brought back for additional questioning.

Senator MATHIAS. I was encouraged to see the interest of Common Cause in the question of public access to the courts. While you are here I will take advantage of the opportunity to commend S. 35 to your attention and solicit your support for that.

It is being actively discussed in our councils. I must say that for myself I would take a more expansive view of access than Mr. Bell did. In no way am I suggesting that a difference on policy is a reason to reject, but there is a troubling aspect and we made reference to that in our testimony.

This is that Mr. Bell's court opinions seems to run counter to the thrust of what President-elect Carter said in the campaign. I think on questions of policy like that clearly the Attorney General has to be part of the administration policy.

You have said that some of his opinions are in conflict with Governor Carter's statements. I do not see that detailed in your statement. Do you have any citations?

Mr. COHEN. We can get you those.

Senator MATHIAS. Will you submit those?

Mr. COHEN. We will get you those citations and the holding of the court and we will brief the case.

Senator MATHIAS. And Governor Carter's statement with which it is in conflict?

Mr. COHEN. Yes.

Senator MATHIAS. Thank you very much.

Senator ABOUREZK. I am advised that the financial statement is in the chairman's office.

Mr. COHEN. That statement ought to be made public, though.

Senator ABOUREZK. That would have to be done by action of the full committee.

Mr. COHEN. I understand.

Senator ABOUREZK. Senator Chafee?

Senator CHAFEE. Mr. Cohen, I am not sure that I completely understand your concept of the relationship between the President and the Attorney General once in office.

Do you see the Attorney General as a close working partner of the President in the form of carrying out policies that the President sets forth?

For example, the President says, "I want very vigorous antitrust action out of the Justice Department." Is that a legitimate thing or is the Attorney General separate and apart, sort of an independent agency as it were, in your concept?

Mr. COHEN. On questions of policy such as your antitrust example or any other question of policy the Attorney General is part of the administration. That is why we talked about a dual role.

But we also know that actions that the Justice Department might take, whether it is in regulations or in prosecutions or any other matters, have a political consequence. When you have a situation, as in the *ITT* case, in which the White House calls off actions by the Justice Department, that is political interference in the administration of justice.

There the Attorney General has to be separate and apart and be willing to stand up to the President. That is why we say there has to be a strong presumption against White House interference in specific cases.

I think because for so long—and you can trace this out: Howard McGrath was Harry Truman's campaign manager from your own State. Herbert Brownell was Dwight Eisenhower's campaign manager. Robert Kennedy was John Kennedy's campaign manager. John Mitchell was Richard Nixon's campaign manager.

We all know that the Attorney General's post in that sense became the Postmaster General's post of an earlier era. We all know that there is a lot that lawyers do in terms of arranging, of mediating, or negotiating.

In a cynical mood, sometimes justified, people would say this is "fixing."

There are other things that a lawyer has to do and he has his special or her special mission in paying attention to what the statutes say, what the overriding policies are, to what the Constitution is about.

I think it is important to try to formalize that relationship between the President and the Attorney General. That is what we are trying to get at and understand.

Senator CHAFEE. Do I understand in your suggestions so far as financial disclosure that King and Spalding should submit for the record how much they received from their major corporate clients in fees in, say, the past 2 or 3 years? Is that what you are proposing?

Mr. COHEN. No. First of all, I am proposing that Mr. Bell provide a list of all the current corporate, business, and other institutional clients of King and Spalding. Then I am suggesting, in reading what is a very, very good and excellent statement by Mr. Bell to the committee on conflicts of interest, that it would be made somewhat more understandable, it would rely more on some hard data rather than on language such as "substantial" which is, as we all know, a good lawyers' word, if there were at least some gross figure that he was talking about in defining what a regular client of King and Spalding is.

Senator CHAFEE. I have no other questions.

Senator ABOUREZK. Senator Sasser?

Senator SASSER. I have no questions, Mr. Chairman.

Senator ABOUREZK. Senator Heinz?

Senator HEINZ. Mr. Chairman, thank you.

I would like to return to the question of the relationship, and the statement of it or a concretization of it, between the President-elect and Judge Bell that you are talking about.

I think we can all probably get in mind a statement with respect to the various activities of the Justice Department, that the White House would not interfere in specific cases, whether they be antitrust,

whether they be cases involving political corruption. That would appear to be, at least in principle, fairly straightforward. It might be more difficult to get an agreement.

Mr. COHEN. It is a good test, though.

Senator HEINZ. A good test.

Second, there is, as I think we are all aware, an opportunity for the White House to review and comment quite effectively on regulations.

Now, this is a tough area because the Office of Management and Budget, by virtue of its management as well as budgetary responsibilities, does, legitimately in my view, have a role in reviewing regulations so that they are understandable and workable and make some sense.

How would you propose that we police, whether there be a policing action, with respect to regulations?

Mr. COHEN. That is why the logs, first of all, are a method of at least knowing what is going on in terms of White House involvement with the Justice Department.

Senator HEINZ. We have not talked in this committee about the logging of a contact between the White House and OMB with respect to regulations sitting in OMB for review by OMB by the Justice Department.

Mr. COHEN. No. There has been legislation that both Senator Stafford and Senator Kennedy have pursued that would make logging in general in the Government, in the executive branch, at high levels, quite complete.

I realize that Congress has not acted yet and are looking for ways of at least beginning to start on logging. I would recommend that the Kennedy-Stafford bill of the last Congress be reconsidered so that it is enacted.

Senator HEINZ. Let us take one specific instance, going back to specific cases. When the Richardson nomination was before this committee, my understanding is that Mr. Richardson said that he would not interfere with the Special Prosecutor and gave him a mandate of independence.

The other day when Judge Bell was before us he said he favored a Special Prosecutor but only with a trigger which means that we would not have a Special Prosecutor unless somebody, as yet undefined, perhaps Judge Bell, pulled the trigger.

Therefore, from my point of view, we start out without a Special Prosecutor unless the Congress enacts one and I don't know that we will.

My question is: Are you suggesting that we should ask Judge Bell, with specific reference to individual appointees, such as the head of the Criminal Division, to guarantee that individual's total independence when it comes to the prosecution or investigation of anything having to do with political corruption?

Would that be a satisfactory kind of assurance to get from Judge Bell or should we be looking for something more comprehensive?

I, for one, intend to get at least the former or should we be setting our sights higher?

Mr. COHEN. I think in terms of policy you ought to be setting your sights higher. I think there is a good argument for Congress having to meet its responsibility and enact legislation on things such as the Special Prosecutor.

There can be triggering formulas which don't just rely on an individual to trigger it. There can be standards and definitions as there was in the Watergate Reorganization Act that passed the Senate but was not considered in the House.

That kind of matter ought to be reconsidered by the Congress.

I think on your specific question, on the Assistant Attorney General for criminal matters, for example, and U.S. attorneys, there has to be independence. They are the ones who are doing the work and making the judgments and that goes central to the question of morale in the Justice Department.

That is a very, very important item. Morale has gone up and down. It's got all the bad aspects of what that involves.

I can't say that we have fully thought what that relationship ought to be between an Assistant Attorney General for criminal matters or any other Assistant Attorney General but I think we ought to have a clue as to the kind of person Mr. Bell is looking for and the kind of leash, long or short. Mr. Bell would give to that person. That would make a real good beginning.

Senator HEINZ. In your testimony or discussion, you mentioned the severance agreement. I asked Judge Bell about the severance agreement. If my memory is correct, he said that he had no severance agreement, that he was leaving his equity, if he had any, in the law firm.

Mr. COHEN. I recall your asking that. What I am saying here is that there is a value to some formal statement. There is a value to formality in this. I think if that is what it is, and it obviously is, it ought to be written up. It is not a big item, but it ought to be part of the record.

Senator HEINZ. He was under oath, I think, at the time he made that statement.

Mr. COHEN. That is part of what you have to report to the full Senate.

Senator HEINZ. With respect to civil rights, you indicated that the transition documents could be very helpful and important to this committee and you seemed to indicate that they were public documents.

I have to tell you that I don't know exactly what kind of transition documents have been prepared either by the outgoing or by the incoming. Are you referring to both outgoing and incoming transition documents?

Mr. COHEN. I've been referring most to incoming, I guess, but I think there is value in looking at the outgoing ones as well. At HUD they have been made public so why would not they be made public at the Justice Department?

Senator HEINZ. Have the members of the Carter transition team made the HUD documents public that they have prepared or did prepare?

Mr. COHEN. It is my understanding that Secretary Mills made them public. That is my understanding.

Senator HEINZ. She made the one public that her administration had prepared.

Mr. COHEN. No; all documents, I believe.

Senator HEINZ. Would she have been in a position to make public the documents of the Carter transition team? I doubt that.

Mr. COHEN. I think if she had them she did.

Senator HEINZ. The question is, I'm fairly certain that for the most part members of the Ford cabinet don't have Carter transition team documents.

Are you suggesting we should ask the Carter transition team people for their documents whether or not existing Secretaries have them? I think that is what you're suggesting.

Mr. COHEN. That is exactly what I'm suggesting. I'm sure Mr. Bell has them.

Senator HEINZ. One last thing. Mr. Bell, apparently, did have a fundraising role in the Carter campaign, perhaps not a major one but a significant one nonetheless.

In your testimony—you wanted to find—you suggested that we should know from Bell raised funds, did he solicit interest group funds, did he solicit interest groups funds successfully. What answers to those questions might Bell give that might disqualify him from serving independently? What kinds of things are we looking for? Is it simply a matter of principle or are we looking for certain things?

Mr. COHEN. I think principle is important because money has influence in politics. Mr. Bell was very candid about when he did it. He said it was right before the Pennsylvania primary. That turned out to be the key primary in the Presidential election on the Democratic side.

So I think one of the things you are looking for is: Was it de minimus? Was it extensive? How does it compare with other kinds of funds in terms of amount? How much was from interest groups? How much was from individuals?

I think it is important to know because we are sensitized, I would hope, to the fact that those who are appointed as Attorney General should not have an intertwined political relationship with the President.

As I said before, the Senate adopted the Benson amendment which prohibited high campaign officials from serving as Attorney General and as Deputy Attorney General. That is not law now because the House did not deal with it but the fact is that it is an important standard.

Part of your responsibility as a committee is to pursue that. It may be only de minimus and therefore it is irrelevant. It may be that he raised most of the money that went into Pennsylvania right before the primary. None of us knows that yet. That is why I would like it pursued.

Senator HEINZ. Thank you. Let me ask you one final question. We referred just a few moments ago to the Senate Watergate Reform Act.

In that act as passed by the Senate it would have prohibited an Attorney General from being appointed, or a Deputy Attorney General, who served as a campaign manager or the like in a key political position in the campaign.

It appears at this point that Judge Bell probably did not meet that high a standard of participation but it does appear that Judge Bell certainly is, while not an everyday close personal friend of the President-elect, nonetheless quite associated with him.

He does know him. He is from the same town. The President's own lawyer, Mr. Kerbo, is a partner of Judge Bell. It might be arguably

correct to say that Griffin Bell is certainly a close friend of the President, not a key political figure in his campaign.

Do you think that a close friendship is as disqualifying for the position of Attorney General as the Senate decided a key political position was when it passed the Watergate Reform Act?

Mr. COHEN. Not per se, not per se, but I think when you have the situation of a close friendship, of some political activity, when you have all of those you have to look at other factors with really incredible care.

The credentials for being able to administer a fair system of justice, the qualities of independence that are crucial to carrying out the post of Attorney General—you then begin weighing them.

Senator HEINZ. Would you say that if there is a record that someone's personal friendship with other parties has caused them to use bad judgment that that would be a very dangerous signal?

Mr. COHEN. You bet.

Senator HEINZ. Thank you.

Senator ABOUREZK. Mr. Cohen, thank you very much for your testimony.

Senator Riegle, we have a very serious problem which I will have to enunciate now. We had to take some witnesses out of order this morning. There are three out-of-town witnesses who have been waiting for 3 days. We have gotten some informal agreements with them out in the corridor on what time they should go on and what time they have to get out of here.

I've got to put one on now so the other one can get on by 11.

Senator RIEGLE. I see.

Senator ABOUREZK. In other words, I have to have two on before 11 o'clock.

Is there a chance you could submit questions in writing?

In fact, when Charlene Mitchell comes up if there are any questions for her they will have to be in writing because otherwise we are not going to be able to get her testimony in time to get Mr. Innis on.

Mr. RIEGLE. I am sympathetic to your problem. I am wondering if I could squeeze in just one question.

Senator ABOUREZK. You have, I guess, a minute. I hate to do that. It is very difficult.

Senator RIEGLE. All right. Let me just ask this of you, Mr. Cohen, either as a representative of Common Cause or speaking in your own right to the extent you can set that aside.

You have been here in the hearings I know for some time. Have you reached a judgment as to the fitness of the nominee, fitness meaning the sum total of all these issues that you have raised here and that have otherwise been raised, at this stage of the game?

Mr. COHN. If I had reached a judgment, I would have shared it with the committee. But I do think that the affirmative burden that has to be met on some of the questions that I have raised has not yet been met. That is why I think it is important for the committee to pursue things properly.

[Material subsequently submitted by the witness follows.]

COMMON CAUSE,
Washington, D.C., January 17, 1977.

Senator JAMES EASTLAND,
Chairman, Senate Judiciary Committee,
Dirksen Senate Office Building, Washington, D.C.

DEAR SENATOR EASTLAND: During my testimony on the nomination of Griffin Bell to be Attorney General, I was asked to provide documentation for my statement that, while a member of the Court of Appeals of the Fifth Circuit, Mr. Bell wrote opinions restricting public access to the courts, and that his opinions stand in obvious contrast to President-Elect Carter's campaign promises to work for expanded class action rights, and broadened definitions of legal standing.

In an appearance at the Public Citizens Forum held at the International Inn, Washington, D.C., on August 9, 1976, President-Elect Carter was asked his position regarding the expansion of class action damage suits by consumer and pollution victims as an alternative or supplement to regulatory solutions. His response was:

"One of the proposals that I favor is to let the state attorneys general be authorized to file class action suits for people within their own states. This is presently prohibited. I also would like to see legislation passed to overthrow the Supreme Court rulings that in the past have blocked consumer class action suits. As you know, there have been two very damaging decisions made, both of which I think are not in the best interest of our people. One says that you cannot file a class action suit unless your own losses have been (I think) \$10,000 or more; and the other one says that, before you file a suit that is based on a class action principle, you must notify every single person, which may be more than a million, that the suit is being filed on their behalf. So, as a general principle, I favor the concept of the class action suits, and those are three examples that come to mind immediately. I am not an expert on the subject, but as Governor of Georgia, in my own consumer protection proposals, these principles were included in my requests from the legislature."

Moreover, in his presentation to the Platform Committee of the Democratic Party, President-Elect Carter emphasized that "we should make class actions by consumers more easily available, to enable them to enforce consumer laws and to give them standing before agencies and courts."

The opinions by Mr. Bell which we referred to as reflecting a difference of opinion with President-Elect Carter are as follows:

1. "JOHNSON V. MORTON," 456 F.2D. 68 (5TH CIR. 1972)

In *Johnson*, Judge Bell ruled that even if the plaintiffs were among those protected by the Land and Water Conservation Act, their interests in the orderly development of recreational resources was too indirect, "attenuated at best," and not enough of an injury for them to have standing to challenge the acquisition of park land with federal funds as a violation of both the federal statute and a state plan for development of recreational lands.

2. "HIGGINBOTHAM V. BARRETT," 473 F.2D 745 (5TH CIR. 1973)

In *Higginbotham*, Judge Bell ruled that the elimination of water pollution near the plaintiffs' residences was not an interest to be protected by the Water Pollution Control Act and, therefore, residents in the affected areas did not have standing to challenge the actions of the Regional Administrator of the Act.

3. "Miller v. Mackey International Inc., 515 F.2d 241 (5th Cir. 1975).

In *Miller*, which concerned the amount of attorney fees awarded in a securities law case, Judge Bell concurred, expressing the view that the present class action rules were too broad and should be changed so that "only those persons would be in the lawsuit which choose to remain in and thus allow counsel to represent them."

4. "Pettway v. American Cast Iron Pipe Company," 494 F.2d 211 (5th Cir. 1974).

In *Pettway*, Judge Bell dissented from a portion of the court's opinion which held that in class action employment discrimination cases, damages could be computed by comparing the aggregated salaries of those discriminated against with those who were not discriminated against, and apportioning the difference among the victims of discrimination. Judge Bell wrote that this method of com-

puting damages should not have been adopted. Instead he argued that claims for damages should be individualized, which—as the majority pointed out—is impossible in many cases.

It is recognized that legislation is needed to clarify the law of standing and class actions. President-Elect Carter has expressed a commitment to expanding these rights. The views of the Attorney General of the United States will be influential in defining the legislation that is eventually adopted. Mr. Bell should be asked whether or not he supports the commitments made by President-Elect Carter or whether he still holds the views represented in these four opinions.

In addition, I have enclosed for the record a Common Cause proposal for the merit selection of Federal judges. This proposal has been submitted to the Carter administration, and it is the outline of what we believe should be enacted with the bill to increase the number of federal judges.

I also wish to supplement my testimony by asking that the issue of Justice Department logging of outside contacts be raised with more specificity with Mr. Bell. Enclosed is a brief memorandum describing the need for such logging and treatment of the issue by the present administration. In order to insure the logging becomes a reality, Judge Bell should be asked to submit a detailed summary of what he intends to require in this important field.

Thank you for the opportunity to supplement my testimony. I hope that this additional information will be placed in the record and will be helpful to the Committee in exercising its responsibilities in reviewing Judge Bell's record.

Sincerely,

DAVID COHEN, *President.*

[Enclosures.]

MERIT SELECTION OF FEDERAL JUDGES

Our judicial system needs men and women of outstanding legal ability and integrity who have a strong commitment to our representative form of government and a sensitivity to the rights of the unrepresented and underrepresented. All too often, persons appointed to federal judgeships and to positions as United States Attorneys simply do not meet the high standards expected by our citizens.

PROBLEMS WITH THE PRESENT SYSTEM OF JUDICIAL SELECTION

Some of the reasons for public disenchantment with the administration of justice are obvious. The system for selecting federal judges and United States Attorneys is one. The present selection system has two effects: first, it fosters the selection of some incompetent and far too many mediocre federal judges and U.S. Attorneys; and second, women and minorities are underrepresented.

The present system works as follows: A vacancy occurs. If either Senator from the state in which the vacancy occurs is of the same political party as the President, the Senator often has a virtual power of appointment. The Senator sends the name of his candidate to the Department of Justice, which has the FBI perform a routine background check. Justice also forwards the name to the Standing Committee on Judicial Selection and Tenure of the American Bar Association. The ABA Committee—which has 13 members including at least one attorney from each Circuit Court of Appeals jurisdiction—rates the candidate.

The President, acting on the recommendation of the Department of Justice, submits the nomination to the Senate where it is referred to the Committee on Judiciary. A blue slip of paper with the name of the nominee is sent to the Senators from the nominee's state. If the blue slip is not returned, the nomination is virtually dead. Senatorial courtesy (a euphemism for backscratching and logrolling) is strong.

It is not unfair to characterize federal judicial appointments, as one federal judge has, as "choice political plums for party patronage." Merit often takes a back seat to politics. Cronyism and logrolling are more important in some instances than a candidate's sensitivity to the rights of the underrepresented. Senate leaders can and do wheel and deal to take care of their friends and political allies.

THE ABA COMMITTEE

The only aspect of the process of selecting federal judges that might reassure citizens is the review of judicial qualifications by the ABA Committee. But even the usually good work of the ABA Committee raises serious issues. Four problems stand out:

First, the recommendations of the ABA Committee are not always followed. A ranking of "not qualified" for former Connecticut Governor Meskill, for example, did not stop President Ford from appointing him to the Second U.S. Circuit Court of Appeals at the pleading of Senator Weicker. Meskill was confirmed.

Second, the recommendations of the ABA Committee are not always worthy of being followed. The Committee, for example, supported the 1970 Carswell nomination. The Committee is not immune from political pressures and preliminary findings of "not qualified" are sometimes revised for less than meritorious reasons.

Third, the ABA Committee's role is merely to react to nominations of the President. The Committee does not search out the most qualified people. Its task is to distinguish between those already-nominated who are "not qualified" and those who are "qualified".

Fourth, while the 13 members of the ABA Committee are undoubtedly highly qualified, they represent a rather limited segment of our society. All are lawyers: all but one are in private practice. The Committee has no women members and the first black was named this September. The youngest member is 48.

COMMON CAUSE PROPOSALS

The remedy that Common Cause should advocate is clear. After extensive study of the judicial selection process, the American Judicature Society proposed a merit system for the selection of judges with appointments drawn from nominees recommended by a permanent, nonpartisan commission of lawyers and nonlawyers.

A Common Cause proposal for merit selection of federal judges would include the following:

First, a Presidentially-appointed nonpartisan judicial selection commission should be established. A single national commission would provide the necessary visibility, prestige, and accountability to ensure that the selection process rises above the anonymity and cronyism that prevail too often at present.

Second, the judicial selection commission should have broad-based membership, including lawyers and nonlawyers, as well as representation of groups that have been traditionally discriminated against.

Third, the President should be required to choose from among a list of names recommended by the commission. The President would retain the prerogative of rejecting the list and requesting another. He could also propose names to the commission for its consideration.

Fourth, there must be a requirement for a broad, continuous, and systematic search for qualified candidates.

Fifth, in order to ensure a broad search, the commission should be assisted by adequate professional staff and advisory committees established in each of the eleven circuit court jurisdictions.

Sixth, there should be a system of public notice of vacancies, opportunity for recommendations for nominees from the public, and opportunity for public comment on the recommendations of the commission before Presidential appointment.

The high visibility of Supreme Court appointments mitigates some of the problems surrounding other federal judicial positions. The blue slip system is not in force. Therefore, in the case of Supreme Court appointments, Common Cause recommends that the President submit a list of possible appointees to the selection commission for its evaluation (replacing the ABA Committee in this role), with the Commission free to suggest additional candidates.

In determining our specific proposals, Common Cause has examined state experience with judicial nominating commissions. One half of the states have adopted some form of merit selection system. The systems vary widely. Some states have a single commission; others have a separate commission for each judicial district. Some provide for judicial representation on commissions; others do not. The number of nominees submitted by the commissions to the appointing authority vary. Some commissions are used only to assist in filling vacancies; others are for all appointments. Sixteen of the commissions are established by state constitution, four are statutory, and six are created by executive order.

U.S. ATTORNEYS

There are 94 United States Attorneys, one for each judicial district. U.S. Attorneys are appointed for a term of four years but are subject to removal

by the President. Many of the problems related to judicial selection apply also to the selection of federal prosecutors and must be addressed. Selection of U.S. Attorneys is at least as political as federal judgeships, since U.S. Attorneys serve at the pleasure of the President and the blue slip system is in force. U.S. Attorneys who owe their appointment to local establishments and political cronyism are unlikely to press sensitive cases involving political corruption, civil rights or environmental protection. Common Cause will continue to study the system for selection of U.S. Attorneys to determine if a commission similar to that proposed for judicial selection is appropriate here as well.

TIME FOR REFORM

The timeliness of these proposals cannot be overstated. While the number of federal judgeships to be appointed each year fluctuates, the average for the years 1960-76 was 34 per year. In addition, there has been substantial pressure in recent years to create new judgeships. Chief Justice Burger cites increased case-filings in recent years to show "a need for 52 additional judgeships and 13 additional courts of appeals judgeships to meet the swiftly growing burdens." In April, the Senate passed a bill to create 45 additional district court judgeships. The House Judiciary Committee favorably reported the bill (with 49 judgeships), but it died at the end of the session. The ninety-four United States Attorneys serve effectively at the pleasure of the President.

The volume of appointments of federal judgeships and United States Attorneys coming fast on the heels of a Presidential election give a sense of immediacy to proposals for a merit system of selection.

LOGGING/DEPARTMENT OF JUSTICE

On August 8, 1973, Attorney General Elliot L. Richardson issued an order entitled "Departmental Records of Outside Contacts" (Order of the Attorney General No. 532-73). The order requires each Department employee to record each oral communication (in person or by telephone) by a non-involved party concerning a case or other pending matter. The logging form includes the date and time of contact, whether in person or by telephone, the name of the contact, the case number, identification of the person who initiated the contact (name, title, organization, address), person who prepared the log, the date, and a summary of the discussion. The order required the employee to keep a copy of the log and to include a copy in the case file or with the head of the unit responsible for the matter. A copy of the order is attached.

According to an April 19, 1975 National Journal Reports article, the order has not been stringently enforced and was under review by Attorney General Levi to determine whether it is "feasible". On January 10, 1977, Robert Havel, Director of the Office of Policy and Planning at the Justice Department, informed me that the order has not been enforced because Attorneys General Saxbe and Levi believed it to be "unenforceable".

The October 1975 Report of the Watergate Special Prosecutor Force found: "Subsequent debate within the Department of Justice has questioned the breadth of the order and the lack of an enforcement mechanism. For example, the memorandum as now written could include casual social contacts in which a total stranger voices a citizen view about a pending Department matter.

"The Attorney General should resolve these problems of coverage and reissue the Order. Attempted political persuasion and other efforts by non-involved parties to secure direct, out-of-channel access to Department personnel should all be part of official records." (page 137)

The 1976 Report of the American Bar Association Special Committee to Study Federal Law Enforcement Agencies ("Preventing Improper Influence on Federal Law Enforcement Agencies") recommended:

"The Attorney General should promulgate regulations governing the logging and recording of contacts initiated from outside the Department of Justice on criminal matters under investigation or before the courts. Congress should enact legislation mandating such regulations and providing guidelines for the Attorney General which cover the following:

- "(1) Personnel required to keep logs;
- "(2) Information to be included in the log;
- "(3) The reporting process within the Department;
- "(4) Personnel action following a failure to log a contact or report;

"(5) Restrictions on disclosure to protect the integrity of the investigation or prosecution and prevent prejudicing the rights of defendants or those under investigation.

"Disclosure of logs should be made directly to an appropriate congressional committee or to the Government Accounting Office on request of that committee. Release or dissemination of disclosed logs should occur, if at all, only after specific approval by the full committee.

"The Attorney General should promulgate regulations governing the logging and recording of requests for investigations or other action by the Department emanating from the White House or the Executive Office of the President. Congress should enact legislation mandating such regulations and include guidelines for the Attorney General . . ." (pp. 63-4, 69).

The March 1974 report by a Panel of the National Academy of Public Administration ("Watergate: Its Implications for Responsible Government") recommended:

"The Panel believes that the Justice Department should move to enforce the existing requirements that all employees keep a record of contacts by outside individuals seeking to influence the disposition of particular matters." (p. 62).

Senator RIEGLE. Thank you very much.

Senator ABOUREZK. Charlene Mitchell.

Once again, I really do not like to do this but I have to ask the committee members not to go into a series of questions to Ms. Mitchell. If there are questions you need to ask, could it be done in writing and submitted to her because we will have a very serious conflict if we do not finish her testimony before 11 o'clock.

I welcome you to the committee, Ms. Mitchell.

Ms. MITCHELL. Thank you.

Gentlemen, and I wish I could say ladies and gentlemen, maybe one of these days that will happen in this committee.

Senator ABOUREZK. Did you support Bella Abzug or not?

Ms. MITCHELL. I will leave my support for later but I would have supported a woman had she been able to run for the Senate, yes.

Mr. RIEGLE. I did, Mr. Chairman, just for the sake of the record.

Senator ABOUREZK. So did I. I did that, however, by endorsing her opponent in New York.

[Laughter.]

TESTIMONY OF CHARLENE MITCHELL, EXECUTIVE SECRETARY OF THE NATIONAL ALLIANCE AGAINST RACIST AND POLITICAL REPRESSION

Ms. MITCHELL. My name is Charlene Mitchell and I am executive secretary of the National Alliance Against Racist and Political Repression.

I have a statement which I hope you all have that I will read but I would like to take a minute to preface that with just some notes.

I think that the fact that the questioning of racism on the part of anyone would be in public office is an extremely important criteria. It is important because how one stands on that question will very often determine how one stands on any other question that faces our country.

Therefore, when people talk about practical and pragmatic politics versus principled responsibility to our people I don't think that we have big differences here. I think that if politics are to be practical they have to be principled, otherwise they will not bear fruit.

In that respect I feel that we cannot afford for regional differences to divide our people. With that, I would like to begin my prepared statement.

Griffin Bell stated recently that the Attorney General of the United States stands as a symbol of equality before the law and of the quality of justice of our country. We agree. The Attorney General as the highest law enforcement official of the land must be the lawyer of all the people.

He must share or at least understand their values, aspirations and problems. He must fight on their side. He should not be a representative of narrow, selfish interests, isolated from the people he is sworn to represent.

Mr. Bell's record convinces us, unfortunately, that he is not the kind of leader this post demands. At every major juncture in his career he has resisted social progress and answered the call of those who defend privilege and the status quo.

Over the last decade, as Americans of every race and color demanded social, economic and political justice, an end to war and the legal ramparts of discrimination, where was Griffin Bell? He showed no comprehension, understanding or compassion. Rather he resisted change both actively and passively.

This committee has an obligation to probe deeply into Mr. Bell's record and his views on the most important questions facing America.

When the first black man since Reconstruction was elected to the legislature in Georgia—and I know this has been stated but I want to go at it from a different level—Griffin Bell, then sitting in the U.S. court of appeals for the first circuit, legally barred the door to Julian Bond.

This incident merits serious consideration. Julian Bond was an activist in the Student Nonviolent Coordinating Committee and a critic of the war in Vietnam. Griffin Bell ruled "The SNCC statement is at war with the national policy of this country . . . We are committed in Vietnam."

The people of the United States were not "committed in Vietnam." Only the administration, the Pentagon, and the cold warriors of the corporate elite were "committed in Vietnam."

The voters who elected Julian Bond did not agree with Griffin Bell that opposition to the Vietnam war was in conflict with the Constitution and it soon became clear that the people of the United States as a whole shared Senator Julian Bond's views, not Griffin Bell's.

Mr. Bell disenfranchised the voters of a black district in Atlanta for freely electing someone with whom he disagreed. This committee should ask itself in what way this qualifies Mr. Bell to be the top legal officer in the country.

The Supreme Court at that time unanimously repudiated Bell's ruling. Today you must ask yourselves how Griffin Bell will address the growing conservative thrust on the Supreme Court.

Griffin Bell's identification with the values and interests of an upperclass white elite is a consistent pattern in his career. His 20-year membership in two segregationist, anti-Semitic and all male social clubs cannot be dismissed as merely personal and irrelevant to the post of Attorney General.

He did not join intending to challenge this exclusionism. As he stated, "I didn't read the bylaws . . . Everything was segregated back then." But are these merely social clubs? They are bastions of power and privilege, the meeting grounds for business and political connections, influence and powerbroking.

This committee must closely examine this man who chose to restrict his social and political contacts to a homogenized clique in which only the white and wealthy were welcome. You must consider whether this qualifies him to represent all the people of the United States for the Piedmont Driving Club is not America.

The people of our country are working people, black, white, Puerto Rican, Chicano, Asian, and Native American. They have little, if anything, in common with Griffin Bell's closest friends and associates.

If proof is needed, we have only to look at Mr. Bell's endorsement of G. Harrold Carswell for the U.S. Supreme Court. Here is a case of social cronyism become political cronyism.

When Mr. Bell wrote, "I recommend Judge Carswell for confirmation without any hesitation or reservation whatever," and then flatly denied having endorsed Carswell, he demonstrated a willingness to sacrifice the truth for political expediency, a willingness from which we have suffered gravely in recent years.

If confirmed, Griffin Bell will promptly face a social problem demanding sensitivity and compassion. We stand on the verge of resuming executions after a 10-year reprieve. A glance at the death rows around the country shows that it is the racially oppressed and the poor who are concentrated there.

Nowhere is this more apparent than in Georgia where 77 await death in the State which has executed more people, 80 percent of them black, than any other State in our history.

This committee should consider whether Mr. Bell's background and experience and close allegiance to the man who framed Georgia's death penalty law, Jimmy Carter, equip him to handle this explosive issue.

If confirmed Mr. Bell will oversee the Federal Bureau of Prisons. The rising movement among prison inmates and the public outcry against behavior modification and experimentation on prisoners demand farsightedness and respect for basic human dignity.

In this respect I would like to mention the case of Andres Cordero, the Puerto Rican nationalist prisoner to whom the Bureau has denied the company of his family in his dying days.

We see no signs that Mr. Bell would make the simple human gesture of releasing Cordero.

In recent years the transformation of the grand jury from a buffer against prosecutorial abuse into an investigative arm of the FBI has aroused widespread alarm. Today Phil Shinnick, Olympic champion long jumper, who has not even been charged with a crime sits in Allenwood, a victim of this new "star chamber."

For 400 years, beginning with slavery until the mid-1960's, racial discrimination had the full force of law. To reverse that heritage, the full force of the law must be employed. Affirmative action to achieve racial equality is a critical necessity.

We question whether Griffin Bell, who was described by Nathaniel R. Jones, general counsel of the National Association for the Advancement of Colored People, as "the evil genius of the fifth circuit, always inventing new barriers to delay relief and frustrate the claims of black plaintiffs" is qualified for the job.

The deep wounds of the Vietnam war are not yet closed. Universal and unconditional amnesty would help to assure the American people

that the abusive prosecutions of antiwar activists in the Nixon-Mitchell era will not be repeated.

We appreciate the sacrifices suffered and the services rendered to the conscience of our Nation by those who resisted the war. We do not ask of Griffin Bell that he share our gratitude, but we do not see in the man who persecuted Julian Bond for his antiwar beliefs an Attorney General who will help end the persecution of those who helped to end the war.

As Attorney General, Griffin Bell will oversee one of America's most threatening institutions, the FBI. It is now indisputable that the FBI's 50-year record from the Palmer "Red Raids" through the Rosenbergs, Martin Luther King and Malcolm X to the Chicago Eight, commonly known as the Chicago Seven, the Cointelpro program and the Reverend Ben Chavis and Dr. James Grant merit it the title of "Masters of Deceit."

Consistently, under Democrats and Republicans, under liberal and conservative administrations, the FBI has bugged, framed, infiltrated, spied on, and burglarized those who fought for democracy, peace, and justice.

The FBI is the germ of a police state in our society. We do not want an Attorney General who will propose another Senate bill 1, expanded wiretap laws, or who will continue the surveillance and infiltration of left and progressive organizations and independent political parties such as the Communist Party, the practice that brought us to the brink of tyranny.

Nothing in Griffin Bell's record of subservience shows us the strength and courage required to dismantle the FBI's machinery of repression.

We want to know the full details of former Assistant Attorney General Robert Mardian's involvement in the frameup prosecution of Dr. James Grant and the Charlotte Three, of Reverend Ben Chavis and the Wilmington Ten, leaders and activists of the black community in North Carolina.

These freedom fighters were convicted on the testimony of informants paid by the Federal Government. The committee should learn from Griffin Bell if he will make a clean break from these past policies and will reveal the truth about the involvement of predecessors.

This committee must ask: Will Mr. Bell continue the policies of developing and consolidating the Law Enforcement Assistance Administration's training, supplying and coordinating of 40,000 local police departments as paramilitary units, complete with weapons like the dum dum bullets outlawed for use in war, and special units like the snooping "Red Squads" and the sniping "SWAT Squads?"

You, the members of the Judiciary Committee, will breach your duty if you close your deliberations without straight answers to these questions. Mr. Carter has urged, "There is a simple way to restore trust in government—to be trustworthy." But trust must be based on experience, facts, and thorough knowledge. This is not a day for blind faith.

Thank you.

Senator ABOWREZK. Thank you very much, Ms. Mitchell.

There are a lot of things that I agree with in your statement. I wish I had time to question you. I wish the committee had time to ask

questions, but I think you are aware of the time problem we have with other witnesses.

Ms. MITCHELL. Thank you very much.

Senator ABUREZK. I want to thank you very much for your statement and your appearance.

The next witness is Roy Innis.

We would like to welcome you and your group to the committee. If you would introduce the people with you, it would be helpful.

TESTIMONY OF ROY INNIS, NATIONAL DIRECTOR, THE CONGRESS OF RACIAL EQUALITY

Mr. INNIS. Thank you.

I have with me at my right my deputy, Ms. Mary Dennison. On my left is Mr. Waverly Yates, CORE's Washington representative.

Mr. Chairman and members of the committee, I am Roy Innis, national director of the Congress of Racial Equality, CORE.

For my organization and myself, I would like to express my appreciation for this opportunity to address you. I will address you also as a member of that vast unsung silenced majority in the black community.

Although we have not been silent in our protest, our voices have been muffled. We have not been able to advise you on matters of importance to us. In essence, a veritable Gordian knot strangles the passageway through which a proper articulation of our true goals and aspirations and our choice of the means to achieve them can be expressed.

This has not been good for us, and it has not been good for America.

We are here today at the invitation of the Senate Judiciary Committee to present relevant testimony on the question of Griffin Bell's suitability to serve as the next Attorney General of the United States.

Our position on this issue has been stated nationally—we support the nomination and expect confirmation of Griffin Bell.

The significance of this particular session extends beyond the question of Griffin Bell, the man. The dissenting view to our own has had more than ample opportunity to unearth any concrete evidence against Bell, but in our mind it has failed to do so. Instead, a furor has been raised around the Bell nomination that has obscured in the minds of many just where the black community stands in terms of Bell, the Carter administration, and each other.

Without fully exploring these unknowns, CORE cannot leave this session feeling comfortable with our participation in or the after effects of this hearing.

As the white community prides itself in—and indeed encourages—tolerance of diversity of opinion from within, this same unwritten right does not exist in the black community. Blacks have been characterized and stigmatized as a monolithic entity or, the other extreme, a disorganized disunited rabble.

There are many culprits in this fraudulent attempt to imply that any one voice or group has been ordained to speak for all of us or that we are incapable of reaching a consensus.

We are a young human rights organization—we've existed less than twoscore years—relative to the likes of NAACP, the Urban League

and others. At the height of the civil rights reformation, spheres of influence crystallized. We, because of our youthful exuberance and impatience, were better suited and more comfortable in the streets and we trusted our elders to set broad policy and to deal in the halls of the legislature, courts, and board rooms of industry, and even negotiate for us behind closed doors.

These spheres of influence had been staked out long before our time, and we had enough innocent faith in our elders to trust them to carry on the fight at those levels until we were prepared to join them there. However, the old generals did not carry out their end of the war.

Further, once we became strategists in our own right and sought our rightful place in the board room of civil rights politics, it was too late. Our generals had become arrogant, selfish, and rigid with age.

They placed a Gordian knot around the throats of the black community, muting any expression except their own. Worst of all, this group of elders which by now had hardened into an elite aristocratic caste, used this position of exclusivity to pursue narrowly defined and self-serving interests.

It is this minority caste that comprise the bulk of the Afro-American opposition to the Bell nomination today.

The civil rights aristocracy questions Bell's ability to treat blacks equitably, but what is their definition of equality? However, we define it, it must be functional for all or at least the majority of black Americans today. Equality is not imposed assimilation, nor is it synonymous even with forced integration, nor can it be defined by some arbitrary mathematical formula for racial balance.

Historically, equality has been the right to define one's community, to control it, but not to the exclusion of others' rights to do the same. It is the right to control vital institutions such as schools, upgrade them for our children without barring other children from equality schools whether they be in our communities or elsewhere.

In a heterogeneous society like ours, an important assumption of equality is, in a phrase, racial—yes even ethnic—integrity.

The National Black Political Convention in Gary, Ind., in March of 1972 was one of the few opportunities afforded the black community to demonstrate the temperament of its majority.

At this convention of over 5,000 delegates from all segments of the black community, the position of the civil rights elite was overwhelmingly repudiated. The convention unanimously passed a resolution condemning busing to achieve so-called racial balance as an end in itself and chose instead to upgrade and to control schools in their communities.

This majority was frustrated and betrayed and its voice silenced. This civil rights clique has misguided and misinformed those who seek a workable solution to the country's racial dilemma.

We must break the monopoly on the ears of Presidents and Congress for it is the majority of blacks who suffer the penalties of white America's negative gut reaction to the inflexibility of impractical integrationist programs.

It has served no purpose to conjure up opposition to Bell based on fantasy. Neither does it accrue to our people's benefit to safely and comfortably hedge taking a position on the Bell controversy.

The bottom line of the Washington-based civil rights barons' opposition to the Bell nomination is fear that he will hear other voices in the black community. This is the crux of CORE's support for him.

CORE does not intend to live in the past on Bell. We are willing to take a chance on the present and the future. During these hearings we have seen more evidence that Judge Bell has an open mind and is committed to desegregation but not wedded to the exclusive path of integration through busing.

The credibility of Judge Bell has been further enhanced by his promise before this committee to appoint a distinguished jurist and member of our community, Judge Wade McCree of the sixth circuit, as Solicitor General of the United States.

In line with President-elect Carter's style of appointments, indications are that he did not seek nor did he get the consent of the civil rights power brokers.

In closing, we would like to say that the inevitability of Griffin Bell's confirmation as Attorney General is a victory for the silenced and suppressed majority in the black community.

Senator SASSER [acting chairman]. Thank you very much, Mr. Innis, for your very thoughtful statement.

Senator Riegle?

Senator RIEGLE. Can you tell me, Mr. Chairman, what our time factor is at this point?

Senator SASSER. Mr. Riegle, you can go as long as you want, up to 15 minutes.

Senator RIEGLE. I am sorry that we were not able to discuss the testimony of the prior witness. I just want to say for the record that I appreciated the testimony that she gave.

Let me ask you, Mr. Innis: Has your organization or have you had the opportunity to review Mr. Bell's record in terms of legal opinions? Do you have any summary of your own analysis, for example, of his participation in the Vandiver administration? Or does the thrust of your presentation today deal essentially with what is presented here in the document that you just read to us?

Mr. INNIS. Yes; we have had time to examine Judge Bell's record as the chief of staff of Governor Vandiver and also as a Federal judge.

We view the Vandiver years similarly to the way we view those years for most Americans. We are not proud of them nor are we proud of those years of most Americans on that question.

In reference to Judge Bell's record as a judge, we have had some limited experience. We have filed briefs before him while he was judge in Atlanta on the fifth circuit. We found him very open.

That is the point that impressed us most, that he was willing to admit a young civil rights organization. I say young because my organization, even though we started in the early 1940's, had a change of style and philosophy in the late 1960's under my administration.

Where we were a staunch, dyed-in-the-wool, hardcore, force-integrationist organization, that changed to one of greater pragmatism and practicality in the late 1960's when we started seeking alternative means of dealing with the problems that face America on the question of race.

Because of that we entered many of the school cases late and had to seek special leave to enter other than as amateurs. Judge Bell was very open to that in the Atlanta case.

Mr. RIEGLE. Am I to understand, though, insofar as his record is concerned in the Vandiver administration, you are not pleased with that record but you are, in a sense, willing to set that aside?

Mr. INNIS. Yes; because I do not think it is particularly different from the average American who operated in that part of the country at that time.

It certainly was not as bad as the record of Justice Hugo Black who became one of the great civil libertarians on the Supreme Court.

Senator RIEGLE. Were you here yesterday when Mr. Rauh appeared? I think you were.

Mr. INNIS. For every minute of it.

Senator RIEGLE. I don't know that I can paraphrase him with complete accuracy, but it seemed to me that the thrust of one point that he was making with respect to his review of this legal team that worked for Governor Vandiver was that its purpose was to, short of anybody having to go to jail, resist the integration process, apart from busing, the whole range of tools for integration. To the maximum extent possible, to hold it up and delay it and defer it and to, in a sense, deny equity for as long as there were angles that could be pursued that would have that effect.

I don't know if your study would lead you to view that time period with the same characterization and, if not, then I'd like you to say not but if you generally agree with the proposition that that was the purpose of the legal team, I'm surprised that that doesn't trouble you more.

Mr. INNIS. Well, I am not completely convinced that that was the purpose of the legal team, at least what I remember of it. I think it would be like a team in any organization; you have some that are for, some that are against with different strategies and, in bargaining and negotiations, come up with a compromise strategy.

From what I've heard, Judge Bell was at one end of the spectrum among those kinds of people and the Governor was at the other end.

Senator RIEGLE. As I understand it, too, in the reconstruction that we've been able to do of this period, the legal team made trips to other States to see how other States were dealing with the problem but insofar as I can recall I think they only went to two other States that we know about for sure.

Both these States were practicing a kind of massive resistance whereas there were other States as close, geographically, from a distance point of view, that were responding in a more moderate or forthcoming fashion and apparently they were not examined, at least not firsthand.

That troubles me, and I'm surprised, I mean I would assume that that would trouble you, too.

Mr. INNIS. Again, you see the question of racist America is too often a game. It depends on which racist tactics we are talking about.

I did most of my early years in the movement up North, in New York City the "Big Apple." Let me tell you, I was so aware of the fellows that were going down South, giving a lot of money to the King movement and the southern movement.

I was the education chairman of the Holland chapter of the Congress of Racial Equality on my way up. Let me tell you, at the point when we started trying to, quote, integrate the New York City school system with those 50,000 black kids in Harlem, 'all those fellows—

these alleged nonracist fellows who were so critical of the other races in the South—all of them adopted the same resistance.

I'm talking about the unions. I'm talking about the liberal legislators. As soon as we started trying to bring the paradise of integration to the backyards in New York, all at once there was a leveling process in America. Everybody was a racist.

Now, I'm saying that that's a game. I'm not about to crucify Judge Bell for behaving the way the mayor of New York City, a card carrying liberal, behaved or the head of the Teachers' Union in New York City, an important card carrying liberal and member of the NAACP, behaved.

Senator RIEGLE. I appreciate your response. Let me ask you about the Carswell recommendation. I assume the notion of Harrold Carswell on the Supreme Court is one that would trouble you a great deal.

Mr. INNIS. Very much so and I am so glad that you fellows in the Senate stopped that for us.

Senator RIEGLE. So am I. I was not here at that time but, like others, I spoke out against that nomination at that time.

You have no fear. I take it, that despite the fact that Judge Bell at that time felt strongly enough about Mr. Carswell to provide a very strong, unequivocal recommendation, you don't infer from that that in terms of future Supreme Court appointees that he would be called upon to recommend that you would have any reason for concern as to the possibility of future nominees of that sort.

Mr. INNIS. Let me say that I disagree with his support for Carswell at that time and I think if he could only live those years over again he would try to avoid it himself.

I think in the case of recommendations coming from him as Attorney General the burden is on him. I think when you give a recommendation for someone, it is someone else's appointment, someone else's selection.

When it is his selection, when the burden is on him to do the primary work of selling that person, I think it will be a little different.

Senator RIEGLE. I guess what you're saying, then, is that you have confidence that he would advance and put forth names quite different than Carswell.

Mr. INNIS. Yes. I think he would be more careful and be fair in doing that.

Senator RIEGLE. On what exactly do you base that, other than just intuition?

Mr. INNIS. I think there will be too much light of day on his selections for him to recommend a Carswell. He is not a foolish man. I think we all can agree on that.

Senator RIEGLE. Thank you, Mr. Chairman. I thank the witness.

Senator SASSER. Senator Mathias?

Senator MATHIAS. No questions.

Senator SASSER. Senator Chafee?

Senator CHAFEE. Mr. Innis, I followed your statement with great interest because obviously this civil rights aspect of this matter has been of great concern to me and I think to others on the committee.

As I listened to your speech in a way I got the feeling that we are caught in a crossfire here between the leadership of some of the more veteran organizations, if you would, of the black movement and the

younger, perhaps more, well, the younger groups such as you represent.

Certainly that came through in your statement to a great degree. It troubled me a little bit because I'm really concerned more about your view on the nominee, but, as I understand what you're saying here, it is that you support the nominee because you feel he is being sympathetic to your problems in view of not espousing busing to the great degree that some of the other activist groups wish it pressed. Is that correct?

MR. INNIS. Not quite. It is not Judge Bell's support of my position. I do not know if Judge Bell supports my position.

What I said is that Judge Bell would be open to hear my, and other people's, position, other than the NAACP. I am saying that he has shown the kind of openness—he has no hidden covenant with the NAACP, no longstanding friendship with them that would incline him to hear them only as an exclusive voice of the black community.

SENATOR CHAFEE. You are basing this on the experience that you and your lawyers have had in the Fifth Circuit when you have worked with Judge Bell, is that correct?

MR. INNIS. That is correct, not that in the Fifth Circuit Judge Bell agreed with my position, not at all. It is that he was at least willing to hear it, to hear alternative positions.

SENATOR CHAFEE. Had you made your decision to come here and testify before you knew of the NAACP position?

MR. INNIS. Yes. I think I announced my intention to support Judge Bell's nomination possibly 2 weeks before these hearings started.

SENATOR CHAFEE. I see.

MR. INNIS. It was documented in the press.

SENATOR CHAFEE. As I say, your testimony carries a lot of weight. I have listened carefully to it, as I have those who have testified before.

I appreciate your coming.

SENATOR MATHIAS. Mr. Chairman?

SENATOR SASSER. Senator Mathias?

SENATOR MATHIAS. There is one word in your statement that does concern me. That is the word fantasy. You say the opposition to Judge Bell is based on fantasy.

People can disagree. Do you really mean that? In answer to Senator Riegle's question about the massive resistance period, something that I think we all agree was an unhappy chapter in history wherever you stood, that wasn't a fantasy, was it? It might be something you are willing to set aside as I think his suggestion was, but it isn't a fantasy.

MR. INNIS. Agreed. That is not a fantasy, but my implication in the use of the word fantasy is that the main objection to Judge Bell by the civil rights aristocracy is not that. For if Judge Bell would commit himself to them, to listen to them exclusively, to seek their advice and consent in dealing with the black community, to make appointments, in other words, if Judge Bell accepted them, asked the civil rights elite, "Who would you guys like to have for Solicitor General?"—if they could select their man, advise him, and consent to his selection of their man, they would be willing to live in the present and the future and bet on the future.

I am saying that the reason that they are now throwing up the strong objections that they are is because they are fearful of losing this exclusive entre to this administration and to Judge Bell, in particular.

Senator MATHIAS. That isn't a fantasy. I think that is a very real concern. If any one person, I don't care who they are or what they represent, is to have the ear of any public official it is certainly a very substantial kind of concern.

You feel that, do you think that you will have an equal ear with other people?

Mr. INNIS. I would hope it could be equal. I don't know whether it would be equal. I think it is reasonable to seek that, reasonable to expect that the old style of the NAACP and Mr. Mitchell acting as the 101st Senator from the black community speaking for all of us is over.

Senator MATHIAS. You want to be consulted and you think you will be consulted?

Mr. INNIS. I want to be consulted. I want some of the guys who disagree with me in the community to be consulted. I want some of the guys who agree with me to be consulted. And I also want Mr. Mitchell and the NAACP to be consulted.

Senator MATHIAS. Were you consulted about the selection of Judge Bell?

Mr. INNIS. No; I was not.

Senator RIEGLE. Would the gentleman yield just for a moment?

Senator MATHIAS. Surely.

Senator RIEGLE. One of the questions that was raised is to the point of whether Judge Bell had at all counseled or talked with or made an initiative to meet with members of the Black Caucus here in the Congress because they, while not by any means a monolithic group, are the black Members of Congress from across the country. He had made no initiative in that direction. That was troubling to me. I'm just wondering if that might not be something that would, as you think about it, trouble you.

Mr. INNIS. I believe that Judge Bell would meet with the Black Caucus. I don't see why he would not want to meet with them.

Senator RIEGLE. No. I guess my point was that he had not made any initiative to do that in this time period although obviously he has been calling on members of this committee as he might properly do.

What I'm saying to you is that, to me, seems to be sort of an early example of whether or not there's going to be much energy put into that kind of a consultative process. I'm just asking: Wouldn't it sort of raise the question in your mind, not having taken initiative to meet with that groups or members of that group here, I'm just wondering what the chances are that a group in New York or some other place is like to be consulted with.

Mr. INNIS. What I believe we have seen here, and I hope this is true, is similar to the promise made by President-elect Carter that he is going to try to sweep with a new broom and try to bypass the old Washington power structure and bring a fresh air to this area.

We might be seeing this reflected down to Cabinet level in the case of Judge Bell. Maybe Judge Bell is trying to hear from a few others first. Maybe he has heard sufficiently over the years from that group and he is willing to hear from a few other people.

But I think eventually he'll get to them, too.

Senator REIGLE. I don't want to impose any more on the time of the gentleman from Maryland except to say that I think that was a lapse on Judge Bell's part and I don't mean for political reasons.

I mean just for reasons of the kind of legitimate concern that exists with respect to the record, with respect to the sensitivity of this post and I am troubled about it. I just share with you my view on it.

Mr. INNIS. I have talked to Judge Bell's wife once by phone, yesterday for the first time in person. I have no difficulty reaching Judge Bell by phone.

Each time I have talked with Judge Bell the conversation came to a close with his saying: I want to be open. I want to meet people. I want to hear different points of view.

I can't believe that he doesn't want to meet with and hear the points of view of the congressional black caucus.

Senator RIEGLE. If I may impose on the time of the gentleman from Maryland for just 1 more minute.

Senator MATHIAS. Go right ahead.

Senator RIEGLE. I thank him.

I guess I'm making a different point because that was the case of you initiating a phone call to him and I'm pleased with the conversation and response you got and so forth. I'm making a different point and I think you understand the point I'm making.

That is that we are now talking about a national post for the entire country and there are a number of black elected officials here at the Federal level who represent a significant slice of the American public and there's lot of apprehension in the black community.

I'm not suggesting it is universal. Your appearance here makes it clear that it is not universal. But it would seem to me that a basic step that one would take who really was sensitive to the realities of the concern that exists would be to make some initiative, some effort to meet and talk with the members of the black caucus here in the Congress.

Mr. INNIS. Forgive me for not wanting to yield status to the congressional black caucus.

Senator RIEGLE. I'm not suggesting that.

Mr. INNIS. I have the feel that the congressional black caucus, although not a monolith, does represent a particular point of view in reference to a solution of the black problems and that that point of view is not shared by the majority of black people in the black community.

Senator RIEGLE. Let me just say to the gentleman that we don't have a quarrel about that because I think you established the point that there is a diversity of opinion and everybody ought to be heard. I'm simply saying, is that not then a very important part of the fabric of opinion that probably ought to be listened to?

Mr. INNIS. They are a very significant part. But I am saying that I almost feel that you are suggesting that there be a primary——

Senator RIEGLE. No. I'm not suggesting that. What I'm suggesting, what I'm worried about is the possibility of a blind spot, a blind spot. What I'm looking for is evidence by either overt behavior or by things that have not been done that would give me a way to measure whether or not, in fact, there is a significant blind spot. That's what I worry about and I really don't feel I should take anymore of the gentleman's time and I thank him for yielding.

Senator MATTHIAS. That was a very interesting and useful dialogue. I am really through. As I said, it was that word "fantasy" that concerned me.

Mr. INNIS. Maybe I should have said strawman?

Senator MATTHIAS. I think what concerns me is this, that there can be greater and lesser worries on a problem of this sort, there can be the sort of things you're going to take a chance on, but when the train leaves this station it is rolling.

It isn't going to stop for 4 years. If there is any baggage that you want to put on board this is the time to do it. If you have a fear, if you have a concern, if you have an apprehension, now is the time to state it because I've been around here long enough to see this thing happen.

Mr. INNIS. It is a very good point you're making. Let me tell you that I am not oblivious of the gamble we are taking.

Let me say to Mr. Riegle and to you, Senator, that if I had a choice, and it certainly is not mine, I would have been much more comfortable with my sister, Barbara Jordan from Texas, being appointed, or Judge Higginbotham from Philadelphia, but that is not the choice.

The choice is someone with the background of Judge Bell. I don't think that is a bad choice, all other things being equal.

The other problem I have is that I am very concerned about the American racial dilemma, not just concerned about it in the ordinary sense. I am concerned that after all these years we have not moved toward the solution. I am concerned that after the great hopes of 1954, Brown 1 and Brown 2, that we have not been able to comply with the constitutional mandate to desegregate America. I am concerned that we have been trying to move the ball in one direction only, the exclusive path of integration through busing.

I am concerned that no one has had the guts to go up against the civil rights aristocracy and say: Enough is enough. Let us be better generals. Let us get out of the trenches. World War I is over. This is now a jet age. Let us use tanks, different strategies, flanking movements. Let us do something else. Let us desegregate America by some other means, some other constitutional means.

That is my concern and that is why I am willing to gamble with Judge Bell. I think he is willing to look in other directions. I think he is willing to say to the NAACP: I respect your views, but I want to hear some other views and I want to try some other things.

Senator MATTHIAS. Of course, what you're doing now is just making my speech. I've said time and again that we've spent so much time right here in the U.S. Senate, as well as in other places of the country, choosing up sides, making speeches for busing or against busing that we are not spending the time we ought to be spending finding some sort of a rational alternative to busing because at best it is no more than a temporary expedient.

It is not an answer to a problem. I think this is true, but I have to respect the concerns of others that have been expressed here to us.

We are very grateful to you for coming and adding your voice and your experience to this deliberation. Thank you.

Senator CHAFFEE. Mr. Chairman, may I ask a couple of quick questions here?

Senator SASSER. Yes, sir.

Senator CHAFFEE. Mr. Innis, I just want to touch back on Mr. Rauh's testimony which I thought was rather an effective presentation in

which he, under his fourth category of roadblocks which he indicated that Judge Bell had presented to integration, referred to two cases, the *Austin school* case and the *Corpus Christi* case, both decided apparently in 1972.

Apparently in the dissent there—Judge Bell certainly participated in the majority, I guess he wrote the majority opinion—the dissent was very, very vigorous as I understand it in saying it's a step backward in Judge Bell's opinion, toward the goal of integration.

In the *Corpus Christi* case it said the majority's remedy is a regression, very strong language.

Have you any comment on those cases and are you familiar with them? I would like to hear your views.

Mr. INNIS. I am not prepared to comment directly on those cases. I have not reviewed them for a very long time but let me say, you used the words "the goal of integration". You see, this is the fundamental problem facing America, the problem of semantics around the question of race.

We need to find somehow a commission of semantics to help us with the proper language to talk about race. The goal should not be the goal of integration. It should be the goal of equal opportunity, the goal of good education, and the goal of finding the most pragmatic path to achieve that.

Unfortunately, we have ordained and annointed integration as that goal. It is not true. It is not a constitutional mandate.

The Constitution mandates desegregation. Desegregation is not synonymous with integration. Integration is only one of many means to desegregate and that is the problem because once we define integration as the goal then any defeat for integration becomes a defeat for equality, a defeat of black people, and that is most unfortunate.

Anyone who is opposed to integration for integration's sake becomes a racist or a segregationist. It is not true. One can be anti-segregationist, be for desegregation, and be opposed to forced integration.

None of these things need be that way if we use the proper definition so I would prefer to use the word "desegregation" instead of "integration".

I think if we notice as we read the various Supreme Court rulings very carefully, the word "integration" never shows up in the decisions of the Supreme Court.

In some of the lower courts, a little sloppy language creeps in. But I have never yet seen a decision where the word "integration" was used. They have always used "dismantle the segregation system", "desegregate", "create unitary school district", but never "integration" and I am so glad that they have not gotten sloppy with semantics and further confused the issue with improper use of words.

Senator CHAFEE. Thank you.

Senator SASSER. Mr. Innis, thank you very much. I must say that you've lived up to your reputation as an articulate spokesman for minority groups in this country and as a real intellectual leader in the black community.

I would like to thank you also, Mr. Yates, for appearing here today and you also, Ms. Dennison.

Thank you very much.

I am informed the next witness is Brother Greene.

Brother Greene, I, as a member of this committee, welcome you here today and I want to thank you for being so patient over the past 3 days.

I also want to give you a special welcome as one of my constituents from the city of Memphis, Tenn., and to say that we are delighted to have you and look forward with great interest to what you have to tell this committee.

TESTIMONY OF BROTHER GREENE, CYPRESS HEALTH AND SAFETY COMMITTEE, MEMPHIS, TENN.

Mr. GREENE. Thank you, Senator Sasser.

My name is Brother Greene. I am from the Cypress Health and Safety Committee in Memphis, Tenn., and I also would like to congratulate you, Senator Sasser, as being in Washington as the Senator from the State of Tennessee and acting chairman.

I think that the people back in Tennessee will be quite pleased to hear that when I go back because I'm going to tell them that.

Senator SASSER. I hope you will, Brother Greene.

Mr. GREENE. Rest assured, I will.

Senator SASSER. If you need any help in telling them, I'll be happy to help disseminate the information.

[Laughter.]

Mr. GREENE. I have some informal remarks and then I have a prepared statement.

Even though I am very happy that you are sitting here, Senator Sasser, as Chairman, I wish that Senator Abourezk had been able to remain here. But I spoke to him in the hallway and he informed me that he had to go and hold a press conference and I personally agreed with the substance of that press conference.

The reason I wanted to address the Judiciary Committee with him present is that I wanted to do publicly what I did in the hallway there a few moments ago, that is express on behalf of the Cypress Health and Safety Committee our deep appreciation to him for his action back in September 1976, regarding the proposal, by the soon-to-be-former President of the United States, of Federal district court, Judge Harry W. Wellford of the western district of Tennessee for the position of filling a vacancy on the sixth circuit court of appeals in Cincinnati.

As you very well know, the people in Tennessee and certainly in the mid-South are aware, that our little two by four civic groups started something back in April and eventually it came to the U.S. Senate here. On September 1, we appeared and testified, and Senator Abourezk was able to put the final touches on one of the most beautiful episodes that I know of the U.S. Senate Judiciary Committee. I am just sorry that he's not here to hear that in public because we feel very happy about that.

Further, I have not been here only for 3 days, Senator. I came here Monday morning at 12:15 and unfortunately because of the way the testimony went, this is my fifth day here and I brought my luggage with me this morning because I have no place to live after today. Our

committee had no more money so the lady let me stay there last night and I brought my luggage here this morning.

Also, I wanted very much for Judge Griffin Bell to be here. In fact, he also wanted to be here. Last night we almost were able to get it together but unfortunately Senator Eastland saw fit to go ahead and close the hearings about 7 p.m. even though Judge Bell had come back.

The reason we wanted Judge Bell here is because Judge Bell had indicated certain things to me privately, which is fine, but I think that the position of Judge Bell as a designate for the Attorney General of the United States making any kind of recommendations or suggestions to me would only have meaning if it is done before the Judiciary Committee.

I will come back to that a little later. In the meantime, I will get to the prepared statement.

The papers that the young lady passed out to you consist of 19 pages. I reduced my actual statement to four pages and I simply attached the referral sheets so that they could be reviewed at another time.

The statement is as follows.

Mr. Chairman, members of the Judiciary Committee, Judge Bell, ladies and gentlemen. My name is Brother Greene. I am appearing here as the spokesman for the Cypress Health and Safety Committee, a nonpartisan, civic group of Memphis, Tenn.

We appear here out of deep concern about the destiny of our country. I have come here at great expense to the members of my organization to make a proposal concerning expanding the process for the selection of Federal court judges in our country.

We are not here because we are against Judge Bell's nomination. We are here because of our concern about one of the most disgraceful situations that exists anywhere in this country. Of the more than 200 Federal district and appeals court judges in the 14 "Southern States," all are white and all are male.

There are no black male Federal district or appeals court judges in the South. There are no black female Federal district or appeals court judges in the South. There aren't even any white females who are Federal district or appeals court judges in the South.

We are not talking about Czarist Russia of yesterday or the backward thinking Government of the Union of South Africa today. We are talking about a section of the United States of America in particular and our Nation as a whole.

None of us are lawyers. The persons who make up our committee are ordinary black and white southern citizens who are truly concerned about our country.

Mr. Chairman, Mr. Bell, and members of this committee, the circumstances that we are calling to your attention exist, particularly in the southern part of our country. They are even of concern to people all over the Nation and people all over this planet, particularly in Africa, South America, Asia, and the Middle East.

The Secretary of State-designate, Mr. Cyrus Vance, and the U.N. Ambassador-designate, Mr. Andrew Young, in the very near future are going to get involved in discussions with government around the globe.

Out of the principal questions the citizens of those various nations will ask is: How does the new administration and Congress in the United States of America really relate to its own citizens? Secretary Vance and Ambassador Young's job can be made much easier, depending on your approach and action regarding this proposal that the Cypress Health and Safety Committee of Memphis, Tenn., has submitted to you.

Often we make jokes about the ostrich which sticks its head in the sand and thinks it has protection from impending danger. We ask that this committee and the new administration not make that fatal mistake.

Let us look briefly at an event that each and every one of us was very much concerned with recently, the general election of November 2, 1976.

While a large number of U.S. citizens participated in that election, it clearly showed a decline of citizen participation in terms of the eligible voters who could have voted.

The primary reason more citizens did not participate is because of the waning confidence that too many of us are beginning to have in our Government.

Members of the Judiciary Committee, it is the intent of the Cypress Health and Safety Committee to try to get you to help save America. Are you listening? Do you believe the United States is worth saving?

On December 1, 1976, State Representative Lois DeBerry, the only black woman member of the Tennessee General Assembly, sent a letter to the President-elect. Copies of her letter were sent to each member of the U.S. Senate Judiciary Committee and others.

Representative DeBerry called for, not just the American Bar Association, but all national bar associations, namely, the National Bar Association, the National Conference of Black Lawyers, and the National Lawyers Guild, national trade union organizations, and national human rights organizations, such as the NAACP, national operation PUSH and the National Urban League, to propose, screen, and recommend potential nominees for Federal judicial positions.

Presently, the historically racist and sexist American Bar Association has an absolute monopoly in the selection process. Representative DeBerry was trying to get you to see the real world as it exists in the South, as well as in America as a whole.

Are you listening, members of the Judiciary Committee? Are you listening, Mr. Bell?

On December 7, 1976, the 13 Memphis City Council members, by unanimous vote in concert with Mayor Wyeth Chandler, passed a resolution calling to the attention of the President-elect the terrible racism and sexism that exist in the southern United States regarding the Federal court system.

If the governing body of a major southern city can read the writing on the wall, we find it almost impossible to believe that this Judiciary Committee and you, Mr. Bell, will not get the message.

On December 15, 1976, a press statement was released and on December 29, 1976, U.S. Representative Harold Ford of the Eighth District in Tennessee sent a letter to President-elect Carter urging the adoption of our proposal to expand the selection process of the appointment of Federal judges.

On January 3, 1977, Mrs. Marilyn Clement, director of the Center for Constitutional Rights in New York City, sent President-elect Carter and others a letter urging the adoption of our proposal to expand the selection process.

On November 8, 1976, Mr. William Goodman of Detroit, Mich., national director of the National Lawyers Guild, sent letters to the President-elect and others urging the adoption of our proposal to expand the selection process.

And on December 3, 1976, the National Conference of Black Lawyers, Mr. Hope Stevens of New York City, sent letters to the President-elect and others urging the approval of our proposal to expand the selection process.

Recent press reports, including a January 10 article in Washington Post, have suggested that President-elect Carter and his administration recognize the necessity of finding an alternative selection process.

It is our intent, with the cooperation of this committee, to utilize this opportunity to have that meaningful citizen input regarding the selection process expansion.

As a matter of fact, last week the Arkansas Association of Women Lawyers urged President-elect Carter and Senators Dale Bumpers and John McClellan to appoint a woman to a Federal judgeship vacancy in Arkansas.

Others have made a proposal urging a black woman be appointed to the vacancy on the sixth circuit of appeals.

Mr. Chairman, members of the Judiciary Committee, Judge Bell, numerous other organizations and individuals have communicated with representatives of our Government urging the expansion of the selection process. They all have taken that action because they genuinely want to believe that you will listen.

As you all know, our proposal will not require any congressional action to be implemented which means that the only action needed is for the President-elect to instruct his U.S. Attorney General to implement our proposed expansion proposal.

Or, you, the members of this committee, can ask for a commitment now from the Attorney General-designate that he will take the necessary steps to get the expansion process implemented.

Or, this committee can so apprise the President-elect that this proposal should be implemented. Finally, each of you separately or together can urge the implementation of the process.

Surely at this point in time there can be no confusion as to what the Cypress Health and Safety Committee of Memphis, Tenn., wants. Nor can there be any confusion as to what this country needs so far as changing the composition and quite likely, in certain respects, the quality of the persons who make up the U.S. Federal judiciary.

Again, Mr. Chairman, members of the Judiciary Committee, and you, Judge Bell, are you listening?

That is the end of the prepared statement, members of the committee. There are a couple of attachments that I would like to read because I think they have unusual significance.

This is the Lois DeBerry letter addressed to President-elect Carter, U.S. Representative Harold Ford, and you, Senator Sasser. The letter is dated December 1, 1976.

Gentlemen: Recently, I had the opportunity to discuss a long-standing concern and certainly a concern of most of the people I represent. That concern is relative to the U.S. Federal Court System, particularly the number of Federal District and Appeals Court Judges in the southern United States.

This letter is written on behalf of the forty thousand citizens I represent as a duly elected member of the Tennessee General Assembly. I might also mention the fact that I am the only Black woman member of the Tennessee General Assembly. The letter is also signed by some members of the Memphis City Council, Tennessee General Assembly, the Shelby County Quarterly Court and other elected officials. In other words, the only signatories of this letter are elected officials representing from forty thousand citizens, as in my case, to City Councilman and County Court members who represent approximately one hundred thousand persons each, directly.

Let me hasten to add, that while the figure of forty to one hundred thousand may be the specific figure of direct representation, the substance of the issue I am writing about is of great concern to the citizens here in the Western District of Tennessee, indeed to the entire American people.

In the southern part of the United States alone, there are more than one hundred sixty one Federal District Court Judges. There are more than forty-one Appeals Court Judges. Based on the information available to me at this time, all of the more than two hundred Federal Court Judges in the south are white and male. There are no Black males and certainly, no Black female District Court or Appeals Court Judges in the entire south. As a matter of fact, there are no white female judges in the south either. This is one of the most disgraceful situations that exist anywhere in this country.

The Cypress Health and Safety Committee of Memphis, Tennessee has proposed to the U.S. Government a practical, realistic and expeditious means that should be used to correct this situation. (See enclosed letter to President Ford and others dated October 1, 1976, specifically page three (3) beginning "Ladies and Gentlemen . . .").

Her letter refers to a letter that was sent to President Ford dated October 1. I will not read it at this time. It simply restates the proposals and I won't be repetitious.

I will continue with the DeBerry letter.

That organization's enclosed news release issued and dated October 25, 1976 clearly states their proposed procedure. Please note that the news release also states the position of the National Conference of Black Lawyers as approved at its National Convention in Detroit, Michigan on October 24, 1976.

Also enclosed is a copy of the National Lawyers Guild letter dated November 8, 1976 to Senator-Elect Sasser and U.S. Representative Harold Ford sent by its National Director, Mr. William Goodman of Detroit, Michigan.

The National Bar Association's National Director, Mr. Carl Character of Cleveland, Ohio, the United Automobile Workers Union, the Political Action Committee of the National AFL-CIO of Washington, D.C. have also indicated they will act favorably on this expansion process soon.

You, as President-elect, have already indicated a concern about the procedure of the selection of judges. Chief Appeals Court Judge Harry Phillips of the Sixth Circuit has indicated an urgent need to fill the existing vacancy in Cincinnati.

We believe the question of filling the existing vacancies in the Federal System should and will be one of the first actions you will take after becoming President on January 20, 1977. Therefore, this procedure can be used immediately. Needless to say, the proposed procedure expansion will not require any Congressional action.

While I am deeply concerned about the vacancy on the Sixth Circuit and the fact that there are no female judges in the south, neither black or white, we believe one of the best ways to correct this situation is as outlined by the Cypress Health and Safety Committee of Memphis, Tennessee.

We sincerely urge its adoption and implementation.

The letter is signed by Lois DeBerry, representative, Tennessee 91st District.

The letter is also signed by Representative Harper Brewer; Squire Walter Lee Bailey, Shelby County Quarterly Court; Mr. Emmet

Ford, State representative; Mr. Willie Rudd, president, United Furniture Workers Union; Mr. Carl Johnson, president, Board of Education of the City of Memphis; Mr. John Ford, State senator; City Councilman Alvin King, State representative; Mr. Ed Gillock, State senator; Mr. James White, State senator; Mr. Oscar Edmonds, chairman, Memphis City Council; Squire Minerva Johnican, vice chairwoman, Shelby County Quarterly Court; Mr. Hubert Butler, president and business manager, Packing House, Leather and Allied Workers Union, Local P-242.

That is the letter that Mrs. DeBerry addressed to the President and asked me to bring and present for the record to the Judiciary Committee. I read the names because she requested that because of the handwriting. She wanted them read so it would go in the record that way.

I have two other letters. I am not going to read Congressman Ford's letter but would like to say that the letter is dated December 29, 1976. It is addressed to President-elect Carter. He asked that I bring it and submit it for the record here in the Judiciary Committee.

[The letter referred to follows.]

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., December 29, 1976.

PRESIDENT-ELECT JIMMY CARTER,
Carter-Mondale Transition Committee,
Washington, D.C.

DEAR PRESIDENT-ELECT CARTER: I would like to call to your attention a plan by the Cypress Health and Safety Committee of Memphis to expand the process by which Federal judges are selected.

It has been pointed out to me by various elected officials, including members of the State Legislature and the Memphis City Council, that of more than 200 Federal judges in the South, there are apparently no blacks or females on the Federal Bench. As a remedy to this disgraceful situation, the community group proposes your consideration of a new policy for reviewing candidates for the Federal Bench.

Executive policy in the past Administration has included a Justice Department investigation of potential nominees with first consultation limited to one bar association. Other bar associations and community groups have been excluded in this primary review. In conjunction with the Cypress Health and Safety Committee, I would like respectfully to ask your consideration of a new direction in the Justice Department investigation which would give equal weight to the opinions of other qualified groups.

I know you share my concern for a more representative Federal Judiciary. Your consideration of this community-oriented proposal, as one means of achieving this goal, would be greatly appreciated.

Sincerely,

HAROLD FORD,
Member of Congress.

MR. GREENE. The other item that I want to refer to—and this I want to read—is very short. It is the resolution from the Memphis City Council. Before I read this I would like to say that I was surprised indeed to see that the Memphis City Council passed this resolution.

SENATOR SASSER. So was I.

MR. GREENE. But the fact of the matter is, they did. I think that is an indication that the members of the Memphis City Council recognized the validity of the suggestion that we putting forth and the reality of the conditions that we complain about; namely, the exclu-

sion of the female sex from participation in the judicial system in the southern part of the United States.

The resolution is as follows:

Whereas, in the southern part of the United States, there are more than two hundred (200) Federal Judges; and

Whereas, women and minorities are not adequately represented in these positions, there being few if any such judges who are women or from a minority group; and

Whereas, President-Elect Jimmy Carter has indicated a willingness to be open and consider women and members of a minority group for all positions in the Federal Government.

Now, therefore, be it resolved by the Council of the City of Memphis, That the City Council of Memphis, Tennessee is hereby memorializing the President-Elect to take cognizance of the circumstance that women and members of minority groups are not adequately represented in the Federal Judiciary and urge the President-Elect to seek out and encourage the appointment of women and members of minority groups to the Federal Judiciary in order to place in these positions, the best qualified people available, irrespective of race or sex.

Be it further resolved, That a copy of this resolution be sent to the President-Elect, the Mayor concurring.

The resolution is dated December 7, 1976, and it has the official seal and signature of the controller of the city of Memphis.

The final piece of material I would like to read to you, Mr. Chairman, is a letter dated December 3, 1976. It is addressed to Senator James Sasser and I was requested to bring it and submit it for the record.

DEAR SENATOR SASSER: At our recent annual convention, the National Conference of Black Lawyers unanimously adopted the following resolution:

(a) that the National Conference of Black Lawyers, National Bar Association, National Lawyers Guild, national human rights organizations such as NAACP, National Operation PUSH, National Urban League and national trade organizations be included in the procedure of proposing, recommending, and screening potential nominees to Federal Judicial positions;

(b) that a qualified black woman be appointed to the existing vacancy on the 6th circuit.

The time is long overdue at which the process of recommending nominees to the federal court should be expanded beyond the narrow confines of the ABA. A peoples' perception of justice rests not simply with the outcome of a particular case or controversy but with a belief that the judicial process is fair and open to the constituency that it is bound by oath to serve.

It is imperative that there be movement away from the archaic notion that the process of recommending potential nominees to the federal bench is the exclusive province of a narrow segment of the legal profession.

We urge you to confer with the members of the Cypress Health and Safety Committee of Memphis and work with them to develop new procedures for the screening and the nominating of candidates for appointment to the federal bench.

It is signed by Hope R. Stevens, cochairperson of the National Conference of Black Lawyers.

Mr. Chairman, there are a few other remarks that I want to make and I will conclude. I am terribly sorry that Attorney General-designate Bell is not here.

Senator SASSER. Brother Greene, you are in luck. Judge Bell has returned and has been here for some time. He walked in just as you were getting underway.

Mr. GREENE. That's absolutely wonderful.

The other day I spoke briefly with Judge Bell regarding the question of the expanding of the selection process. Although it was a very brief encounter, he did indicate that he felt that something had to be done

perhaps along the lines that the Cypress Health and Safety Committee had suggested.

He further said that certainly he had not had a chance to review our proposal in depth. We concluded the encounter by saying that as soon as it is possible a meeting would take place between Senator Sasser, Congressman Ford of Tennessee, and representatives of the Cypress Health and Safety Committee and perhaps others to deal with this question.

I simply wanted to say that in the presence of Judge Bell so that when we try to call to make contact with him after January 20—you know, one of the unfortunate things about our Government and institutions in this country is that most often the people who are selected to assist the particular person in a given position become a plastic shield and prevent the necessary contact.

We don't want that to happen when we attempt to get in touch with Judge Bell after he is confirmed by the Senate. That is why I wanted to say that out here, so that it would be a public thing and I could go back and tell the people in Memphis that such an arrangement had been generally agreed to.

I am particularly happy that Judge Bell is here because, in that way, he will make sure that there is no plastic shield involved when we try to reach him.

Back in November this proposal was presented to the people of the Midsouth. I would just like to mention that on Radio Station WWFE I asked to have 1 hour on the program with a person there by the name of Marge Thrasher.

After the first hour, Marge Thrasher asked if I could stay to discuss the question for a second hour and I did.

Senator SASSER. Was this a call-in program, by the way?

Mr. GREENE. Yes; it was.

Senator SASSER. She wanted you to stay for another hour because of audience participation, people calling in to chat with you?

Mr. GREENE. That is correct.

Also, back in November, WDIA Radio had a 1-hour call-in program. Of course, it reached many people there in the Midsouth. On WREC Radio we had 1-hour public affairs time and we discussed this question on the air. Then we had one-half hour on WLOK Radio. We had one-half hour on WMPS Radio. And then on WREG TV we had a half-hour panel program. Dr. John Jordan, a member of our committee, and I participated in that program with Clark Podius, a representative of the Memphis Scimitar, and Paul Dorman, a representative of that station.

On WHBQ TV, there was a half-hour program, a panel-like one. On that program was an attorney by the name of Uro Adams who is the regional representative of NCBL, and myself.

So there is no question, Senators and Judge Bell, that citizens of the Midsouth know about our proposal and we want the Senate Judiciary Committee and Judge Bell to know about it. Certainly, we would hope that they would be able to act on it expeditiously.

Now there are one or two other brief points that I would like to refer to. I would like to refer to the testimony of Mr. Clarence Mitchell, of the NAACP.

All I want to say in that connection is—and I am referring to only an aspect of his testimony and that aspect had to do with the importance of the Attorney General in the United States—that the Attorney General is in our judgment a pillar on which almost everything rests.

I would like to refer to another Mitchell, Perren Mitchell's statement, on the importance of the local U.S. attorneys. Here I want to refer to the local U.S. attorney in the Western District of Tennessee, Mr. Thomas Turley.

I have, on behalf of the Cypress Health and Safety Committee, had occasion to try to get Mr. Thomas Turley to act on an environmental problem in Memphis. The environmental problem specifically was that raw human sewage had been backing up and overflowing inside of a public school for more than 6 years, and the Memphis City government and the county government of Memphis, health officials, and others were unable to do anything about it. That is a lie. They were unwilling to do anything about it. On behalf of our committee, I went to the U.S. attorney, Mr. Turley, and we asked him to see if the Federal Government could do something about the obvious violation of our rights here.

Mr. Turley said he would take it into consideration and I would hear from him. I called his office a couple of times and never did get a response.

It is interesting to note that in 1974 there was an encephalitis epidemic in the midsouth, specifically in Memphis, Tenn. We began as a civic group to deal with that question. Subsequently, we got some movement on it.

But before they started to repair that particular problem, in 1975 we had a second epidemic in Memphis, and I know for a fact, according to the Memphis and Shelby County Health Departments, 27 human beings died of a particular kind of encephalitis, the Saint Louis strain which is caused by the Culex mosquito.

The Culex mosquito breeds in sewage, therefore, the vector is in the system of the mosquito, and when the mosquito bites a human being unless the antibodies are such to resist the vector from the Culex mosquito the result is they wind up with Saint Louis encephalitis, and medical science has stated publicly that they have no known cure for that kind of disease.

We tried to get Mr. Turley to act on this, and he was unable to. We did not stop there. We sent a letter to the Assistant Attorney General, Mr. Pottinger, in Washington, D.C. Subsequently we received a letter from Mr. Pottinger. I am sorry I don't have a copy of it here but if you need that letter I'll go back home and dig it up and bring it back.

Mr. Pottinger replied, in essence, saying that there are no Federal statutes involved.

Now, the health conditions, the environmental condition was obviously of no concern to him and we would certainly hope that Mr. Bell, if he is approved by the Judiciary Committee, would get somebody down in the western district of Tennessee who will deal with human beings' problems whether or not there is a law involved. The question is whether or not their human rights are involved.

Finally, I want to mention one more thing in question with the local U.S. attorney in Memphis. I heard on the radio on my way to the airport last Monday morning that a Member of the U.S. Congress

had complained because the U.S. attorney there selectively chooses the people and selectively chooses the party organization that they act on complaints for.

We believe that the kind of selectivity regarding the laws of the United States should not be permitted by Judge Bell. On the basis of the discussions that I have had with Judge Bell we are certainly optimistic and we would certainly hope that this kind of situation be brought to an end if he is confirmed by the U.S. Senate.

Thank you very much.

Senator SASSER. Thank you very much, Brother Greene. I share your concerns about the absence of minority representation on the Federal benches in the South.

We have been most fortunate to have on the sixth circuit court of appeals Judge Wade McCree; but I understand that Judge Bell is going to elevate Judge McCree to position of Solicitor General.

I am very much interested in the resolution passed by the city council of the city of Memphis. I would anticipate that in the next few years, or as vacancies appear in the judiciary, I know in Tennessee and I suspect all across the South, this situation to which you have alluded will be rectified.

Your proposal, as I understand it, is that a commission be constituted, with representation not just from the American Bar Association, but from other groups as well, to make recommendations for Federal judicial appointments. Is that correct?

Mr. GREENE. What we proposed, Senator Sasser, is that the Justice Department, because that's the agency which would have jurisdiction in that respect, involve these organizations that are named, the NCBL, National Bar Association, and the National Lawyers Guild, in the very same manner as they have worked out the arrangement with the American Bar Association.

In that connection, the arrangement that was worked out with the American Bar Association is very unfortunate because according to the former chairman of the ABA's Committee on the Federal Judiciary, Mr. Warren Christopher, those arrangements appear to not have any criteria that is reflective of various presidential Executive orders regarding civil rights as one aspect. Also those arrangements—and when I say “arrangements” I am using the word in quotes because that is the word that Mr. Christopher used—those arrangements seem to be void of the judicial criteria that is needed in such arrangements.

I think that if proper arrangements are worked out with the ABA, with the National Council of Black Lawyers, National Lawyers Guild, and the National Bar Association that that would best serve the American people's interests.

Senator SASSER. Let me say that—and I think the record will bear me out—Judge Bell in his first day's testimony said that he intended to institute a screening commission which would screen applicants, at least for judges on the appellate level, and that this commission would be made up of all levels of our society including lay persons and representatives of minority groups, both professional minority groups—that is black bar associations—and other representation. I was delighted to hear that.

I might say this, too, Brother Greene, your complaints about the U.S. attorney in the Memphis area are not new to me. I have heard similar complaints from representatives of the Memphis Bar Association and from others in the area. I even saw a column in a Washington newspaper last week which was critical of the operation of the U.S. attorney's office in Memphis, Tenn. So I will be happy and eager to look into that at the appropriate time.

Mr. GREENE. Let me say just one thing, Senator Sasser, regarding the absence of black Federal judges in the South. Judge McCree is a black man on the sixth circuit. But the longstanding concept about the area that makes up the South does not include the sixth circuit.

One other thing, I heard Judge Bell testify the other day and he did indicate that he favored the idea of expansion but regretfully he mentioned only the ABA and the National Bar Association. But I think that he's moving in the right direction. I also think that with our cooperation we will get him there.

Senator SASSER. Brother Greene, you have the reputation of being one of the most tenacious leaders in the Memphis area. If you are committed to this idea, I want to serve notice on Judge Bell that he is going to hear from you time and time and time again. I have a hunch that you're going to get your way on this or certainly have a substantial amount of input into it.

Brother Greene, I want to thank you for coming here, for appearing, and for giving your testimony. Your ideas are valuable to this committee, and I am personally going to see that every member of this committee gets a copy of your remarks. I am going to urge them to read your comments with great care.

Mr. GREENE. Thank you, sir. Thank you very much.

Senator SASSER. If you want to stay overnight and can't find a place to stay tonight, I've got an extra bed at my house. Give me a ring.

Mr. GREENE. Thank you very much.

The tenacity that you referred to that I am supposed to be in possession of, I think if we join forces and attack Judge Bell together, and I think that we can, I can use that tenacity elsewhere.

Thank you very much.

Senator SASSER. You can count on my help.

Mr. GREENE. OK.

Senator SASSER. Thank you very much.

The committee will be in recess until 2 p.m.

AFTERNOON SESSION

Senator ABOUREZK [acting chairman]. The committee will come to order.

The written responses to the written questions given to Judge Bell have now been received by the committee. They will be made a part of the record.

The first witness this afternoon will be Mr. Julian Bond. I do not know if you are still a State representative.

Mr. BOND. I am a State senator.

Senator ABOUREZK. State Senator Julian Bond, would you introduce the person with you?

Mr. BOND. This is attorney Margie Haines who is a civil rights lawyer from Atlanta.

TESTIMONY OF JULIAN BOND, STATE SENATOR, ATLANTA, GA.

Mr. BOND. Thank you.

I want to thank you for the opportunity to appear before this committee to testify with regard to the nomination of Griffin Bell. I realize my request was made after the informal deadline which you had set and that by permitting me to come you have lengthened what had been extended and difficult hearings, and I appreciate your generosity.

I am not here today to recite to you what I have or have not done in the last few years, or to ask that you accept me on the basis of my experiences as an expert on the racial attitudes of white men. I do not purport to speak for the black community, the civil rights community, or anyone else who is not here.

I do not purport, merely because I live in the South, to be any more expert about judging the views and characters of Southerners than the men and women from Pennsylvania, Michigan, or New York.

I am here today as Julian Bond of Atlanta, Ga., to express my personal views and hopes regarding how this committee will handle the difficult and important task of weighing the nomination of Judge Bell.

I am particularly concerned about the committee's responsibility for resolving the clear, factual dispute regarding the role Judge Bell played during the Vandiver years.

The question is squarely presented by the evidence you have heard. There are those who claim that Judge Bell was actively working within the Vandiver administration to persuade the Governor and others that they must obey the law and directions of the Supreme Court, that they must voluntarily and promptly integrate the public schools, colleges, and other segregated State institutions.

There are others who claim that Judge Bell was the architect of massive resistance in Georgia, that he played a role in fashioning a variety of segregationists bills and measures, that he helped the administration prevent, to minimize, and above all delay the integration which the Supreme Court had commanded occur without further postponement.

That is the factual issue which must be decided, and it is you who must decide it. The issue is vital not only for what it says about Judge Bell's racial views in 1960, but because if the versions of the facts advanced by his opponents is correct, Judge Bell was not honest and candid with this committee.

I cannot tell you the answer to the question. I, like almost all other witnesses you have heard, have no personal knowledge of what Judge Bell did in 1958 to 1961. The only people who really know what occurred are the men who sat in the inner councils of the Vandiver administration.

No member of the Senate, with the possible exception of Senator Talmadge, has personal knowledge of what occurred in those councils in the early 1960's.

What I do personally know is limited to the consequences of the policies in 1958 and 1961. Every public school and college in the State of Georgia, and even the cafeteria at the State Capitol of Georgia was segregated. There was open and notorious discrimination in employment against blacks by every State agency. It was difficult, if not

impossible, for a black man or woman to register to vote in Georgia outside of Atlanta.

I was arrested for seeking service at an all-white cafeteria in the Atlanta City Hall.

Every intelligent lawyer in Georgia, black or white, knew that this was illegal. It was as unlawful as any of the forms of misconduct forbidden by the statutes of the Constitution of the United States.

I do not know what part Judge Bell played in the pattern of deliberate defiance of the law by the officials of Georgia. That is for you to decide. But any man who gave aid or comfort to those who were knowingly violating the constitutional rights of thousands of blacks, and any man who would be other than totally candid with you about his actions in those years, does not merit your approval to serve as Attorney General of the United States.

This committee thus sits, then, in a very real sense, as a jury acting on behalf of both the Senate and the people of the United States. We are looking to you to give us the careful, unhurried, and detailed analysis of which you are capable.

Whatever the outcome of your deliberations, both public confidence and Judge Bell are entitled to a thorough and painstaking decision and report which resolves the factual questions which now trouble the country and your colleagues.

This is not a committee matter which can be resolved by a quick committee vote and some staff writing. Each member of this committee should personally review the testimony and other evidence, withholding judgment until the consequences of that thorough analysis becomes evident.

The responsibility to resolve this factual issue is yours alone. Neither Julian Bond, nor Andrew Young, nor Jimmy Carter can decide this matter. Only you have sat here for 4 days and heard the evidence. Only you have watched the witnesses and observed their demeanor. Only you will be accountable to your consciences and the country if you fail carefully to analyze the evidence, to proceed with caution, and to pronounce the judgment which the evidence compels without regard to politics or patronage, to friendship or favoritism.

That this responsibility should fall on you is consonant with the procedures contemplated by the Constitution and the Senate rules.

When President-elect Carter selected Mr. Bell he did not know and could not have known most of the evidence that has been presented to you. That is not the fault of Mr. Carter, but inherent in the process by which anyone is nominated for office. The interval between nomination and confirmation, and the cautious, deliberative role of the Senate, were intended by the framers of the Constitution to allow witnesses, documents, and controversies to emerge.

All that has happened in this case. The procedures of the Senate properly place upon each of its committees a special duty to help resolve questions of the facts bearing on decisions the Senate must make. The committee members alone can observe the demeanor of witnesses, and in most cases they alone have the time to review this sort of complex and conflicting record that exists with regard to Judge Bell's record in the Vandiver years.

The problems before you bear a certain relation to the difficulties faced 1 year or so ago by the House Judiciary Committee. I have some

experience in political office. I am aware of the real and reasonable political problems caused by the Bell controversy. Those of us who appear as witnesses, however we testify, are aware of the political consequences of involvement in this matter.

The consequences and pressures of which we are aware at this side of the table are equally present on your side. The only difference is that we volunteered for trouble, whereas you had trouble thrust upon you.

We know that any decision that you reach will be unpopular with constituents or elected officials upon whose support you must depend to do your job and get reelected. Those are the realities of the world in which you and I work, and are, within reasonable limits, not improper. I cannot assure you that however you vote your vote will not be costly for you politically, but I do believe that you will find, as the members of the House Judiciary Committee discovered in November of 1974, that if you make your best effort to determine the facts without regard to fear of reprisal or hope of reward, the political price of your decision, whatever it may be, will be substantially smaller.

Resolving the evidence will not, I know, be easy. You must compare the recollections of the witness with the documentary evidence on the record. You must assess whether Judge Bell, both in what he said and how he said it, was a credible witness. You must decide from Mr. Cochran's testimony whether Judge Bell was merely furnishing him with information, or was advancing Governor Vandiver's policy of trying to persuade blacks to shrink from asking for the rights guaranteed by the U.S. Constitution.

You must weigh all the evidence in the light of the fact that no real integration occurred in Georgia schools until 10 years later, and then not by compromise and private discussion, but because integration was ordered by the Federal courts.

In sifting through the evidence you will, I believe, be aided by the fact that some members of this committee, like most on an ordinary jury, are nonlawyers who must rely on ordinary common sense.

In deciding this issue I hope you will remember that there were whites in the South during the difficult years we have been discussing who stood up and openly urged that Georgia obey the law: integrate the schools thoroughly, promptly, and without waiting for the Federal courts to order it.

Griffin Bell may have been one of those who did. He may have courageously told Governor Vandiver to do what Governor McKeldin had done several years earlier: to obey the law without delay. Whether Judge Bell did that is for you to decide. But we would dishonor the memory of those who bravely fought for what was right, some of whom paid for their valor with their lives, if we were to pretend that there was no choice in Georgia in 1960 but silence, segregation, and subversion of the law.

With regard to the decision in the *Bond v. Floyd* case, I want to reassure the committee at the outset that I bear no personal malice toward Judge Bell because he happened to rule against me. He was never impolite or hostile to me personally during those proceedings, and I am sure he believed at the time, in good faith, that he had decided the case correctly.

Your appraisal of the *Bond* decision must begin with the fact that Judge Bell has told the committee he now thinks his decision was incorrect. Judge Bell's new position, of course, comes a decade after the Supreme Court unanimously reversed it. In disavowing that decision he gave no indication of personal concern with the free speech issues at stake. He professes no conversion to worship of the first amendment.

Nonetheless, if the acknowledged error of the *Bond* case were merely technical, if he had misread the Federal rules of civil procedure, or misconstrued some tax law, his renunciation of the decision would end the matter. But *Bond v. Floyd* was not such a case.

You have been repeatedly asked for the last several days to recall the tenor of the times in Georgia in 1960 with regard to the issues of segregation and race. I would ask you to recall with me the tenor of the times in the United States as a whole with regard to the equally vital issues of war and peace.

America's elected leaders, despite election pledges to the contrary, were leading the country into a disastrous, costly, and immoral war in Southeast Asia. The hearing rooms of the Senate have been filled this week with officials of the Johnson administration openly denouncing both the war in Vietnam and their role in it.

But a 1966 criticism of the war was not a popular tactic for gaining congressional support for confirmation as a member of the Cabinet. In 1966 criticism of the war, still cautious, reluctant, soft-spoken criticism, was anathema to the men who ran this country and a danger to those foolish enough to utter it.

Men and women were fired from their jobs, particularly school-teachers, for such criticism. Draft boards seized upon it as a reason or excuse to force young men into the army.

In the halls of this Congress members of both bodies vilified critics of the war with all the rhetoric and passion of which you gentlemen are capable. The then small numbers of political leaders, some of you among them, who dared to raise questions about the war were threatened with political reprisals from the White House and others.

Police and FBI agents photographed and harassed opponents of the war and burgled their offices. Men and women shrank from lending their names to petitions and organizations, recalling the work of the McCarthy committee.

Those were dark days for the first amendment. The Constitution, the courts, and the judges of the United States were sorely tested.

My case was just one among many. It was not the most important case, it was certainly not among the cases in which the opponents of the war suffered the greatest personal harm, but it was a case which put in issue the most basic principles upon which this Nation was founded some 200 years ago.

It was not merely an attack on free speech, it was a full-blown assault on the principle of democratic Government. For which the Georgia legislature sought to do, with an openness that deceived no one, was to exclude a duly elected member of the assembly solely because they disagreed with his views on a matter of public policy.

I need not explain to you what would happen to our system of Government if the legislature and the Congress were free to exclude Congressmen, Senators, assemblymen, solely because of their views.

It is down that path that Eastern Europe travelled at the point of a bayonet two decades ago.

Bond v. Floyd was an important case, but to a U.S. circuit judge sworn to uphold the U.S. Constitution it should have been an easy case. Every member of the Supreme Court knew the only possible outcome. In those troubled days when critics of the war turned to the Federal courts to protect their rights to express their views, most judges passed that test posed by that litigation. Judge Bell failed.

Judge Bell does not claim to be a born-again disciple of the first amendment. He has shown you no attitude abundantly different from that he held in 1966. He has exhibited no contrition. He has done little more than acknowledge that the Supreme Court has now concluded his decision was wrong.

I don't think that what occurred in Georgia in 1966 is likely to happen again in similar form in the next 4 years. I would certainly hope not. But it is vital that the Attorney General be a person of great sensitivity to the civil liberties guaranteed by the Constitution. The Attorney General must be an administrator who will oversee the FBI with a constant concern for the first and 14th amendments. The Attorney General must be a lawyer who regards enforcement of the 14th and 15th amendments as of the highest priority. Griffin Bell was not such a man in 1966 and he is not such a man today.

The task ahead of this committee is a difficult one. It will test your ability to find the truth, and it will try your consciences. I do not urge you needlessly to impugn the character of any witness, or of any others who were discussed during the hearings. I do not request that you reopen old wounds or controversies if they will shed no light on Mr. Bell's fitness.

I ask only that you give us, as the guardian of the integrity of the Nation, an Attorney General whose candor before this committee is beyond dispute, that you give us as part of the national leadership for the years ahead an Attorney General who was not wrong about the great moral issues of the last two decades, that you give us as the chief enforcer of the civil rights laws of the United States, an Attorney General whom 20 million black Americans will know, beyond any reasonable doubt, is both personally and deeply committed to the principles of equality and racial justice.

Thank you, Mr. Chairman.

Senator ABOUREZK (acting chairman). Thank you.

There has been a thread of testimony throughout these hearings that you have articulated more strongly and clearly than anyone else. It might be summarized by an exchange between Henry David Thoreau and a friend who visited Thoreau in jail. The friend asked, "What are you doing here?" And Thoreau asked, "What are you doing out there?"

The thread is the suggestion that anybody in the South who was not in jail in protest against what was happening with regard to segregation and discrimination must have been a part of it.

I have no personal experience myself. I am curious to know if you would be that strong as to say that if they were not in jail or if they were not protesting loudly they must have been a part of what was going on with the establishment there.

Mr. BOND: Well, Senator, there is a saying that became popular after this period had passed by, and it said that if you weren't part of the solution, then you were part of the problem.

I am suggesting that the record in these hearings to date raises a serious question about whether Judge Bell was part of the solution or whether he was part of the problem.

Senator ABOUREZK: That makes it more difficult for us, I think, to make a determination in our own minds. Judge Bell himself says that everything he did was to move it toward less segregation, although he admitted he was certainly not the cutting edge. Other people were. The ones that you mentioned and yourself were part of the cutting edge. But he claims that he did not try to go toward more segregation but tried to go away from it.

Other people who have testified have said even stronger than you did that he did take part in the segregationists' policies and that he drafted them and so on. It is very difficult to determine the factual situation, as you said.

Insofar as the free speech issue that was decided in the *Bond* case, first of all I want to express to you my thanks for your early opposition to the Vietnam war. The position you held was one where people listened to you. I am glad you came out as you did and when you did.

Mr. BOND: Thank you.

Senator ABOUREZK: I think it was a very bad decision. I read it the other day in preparation for these hearings.

When I discussed it with Judge Bell in my office when he came to pay his call, he said: I have to admit I was flat wrong. It was a very bad decision I wrote.

That brings me to another question. Even assuming the worst case in his work for Governor Vandiver, is it possible that any man or woman can change in their views, and that he may no longer hold the views he did 10 years ago or 4 years ago, or even 1 year ago?

Mr. BOND: Of course, Senator, it is possible. All of us change and do change. That is part of the process of growth.

I think one of the questions—and it is a difficult one that the members of the committee must ask themselves and answer for themselves, for the testimony here is conflicting and contradictory—is, What was Judge Bell's role during the Vandiver years?

If he acted as a delayer, and if he helped direct a system which was intended only to halt the process of school integration in Georgia—and that is precisely what the system did—then he has been less than candid with you.

If, on the other hand, he behaved as he said he did, then that is an example that he was a better man in the 1960's than some of his critics may now believe.

But I believe it is possible to change. It is possible to grow.

Senator ABOUREZK: Obviously, as Attorney General, Mr. Bell would have to follow Governor Carter's broad policy outlines. I am not saying that Mr. Carter would pull the strings every day in the Justice Department, nor should he; but the policy guidelines will be there for any Attorney General to follow, whether it is Mr. Bell or someone else. Are you sufficiently confident of Governor Carter's civil rights position to think that its policy guidelines will allay your fears?

Mr. BOND. Let me say that I have not been satisfied with any President's civil rights position in my memory.

Senator ABOUREZK. Including Governor Carter's?

Mr. BOND. Yes; including Governor Carter's.

I want to try to be responsive to that question.

I campaigned for Governor Carter in the closing days of the campaign. I was not an original supporter of his. I supported another and unsuccessful candidate. Like many other people I had great hopes and expectations that his election signaled a beginning of a really new era in race relations in the United States, and that the Civil War, the War Between the States, had finally come to real end and northerners and southerners and blacks and whites could begin to deal with each other in a new and more healthy way.

The Bell nomination heightened some of my concerns. As I tried to say in my testimony, I do not know the answers to the questions of what Judge Bell did and did not do when he worked for Governor Vandiver. Not knowing, my concern is heightened and frankly I am worried.

Senator ABOUREZK. Senator Mathias?

Senator MATHIAS. Mr. Bond, I want to join with the chairman in welcoming you to this committee and thanking you for coming here. It is not an easy job for those of us who sit behind this bench, and I know it is not an easy job for those who have been sitting at the witness table, but I think it is a necessary job. We appreciate your help in trying to do it.

I was interested and gratified that in your remarks you mentioned the name of Governor McKeldin. Some of the witnesses yesterday implied that desegregation was an easy process in the public schools in Maryland. But, as has been said so often here, you have to look back and put yourselves in the context of those days.

There was a columnist for the Baltimore Sun named Frank R. Kent, who used to write that the only thing that separated Maryland from the Solid South was the Potomac River, and when the Supreme Court handed down the decision in the *Brown* case Governor McKeldin was, as I recall, on the Eastern Shore of Maryland. The press went to him and gave him the news of the case and asked for his comments. His instantaneous reply and all that he said was: "I will obey the law."

That was what happened in Maryland. That is the way it was.

All of this conversation and all of this discussion and investigation that we are doing is really directed at a single question. It is important that we know what happened during the Vandiver years. It is important that we analyze Judge Bell's judicial decisions in order to have a window into his mind, and it is important that we know about his current political associations. But it all comes down to one final question: Will he make a good Attorney General?

I wonder what your judgment on that question is?

Mr. BOND. Senator, before I answer that let me say that I used to live near Rising Sun when the Ku Klux Klan had rallies there. I know that it was not an easy process in the State of Maryland and that it took some courage for Governor McKeldin to do what he did.

I think that Judge Bell could make a good Attorney General but, upon reading the testimony that has gone before, he would have to prove it to me.

I am worried, as you are, about what happened during those years. It is going to be difficult for the members of the committee to arrive at the truth. I do not want to suggest that because I do believe men and women can change, that none of us can ever do better than he did yesterday, so I think Judge Bell could make a good Attorney General. But I do not know if he would.

Senator MATHIAS. That poses a difficult problem for us. A lot of this testimony is centered around the civil rights issue, but there are so many other aspects of the Attorney General's duties which impinge upon the lives of every American. For example, it has been the custom for the President, from time to time, to call upon the Attorney General to sit on the National Security Council.

The Senate committee which studied the intelligence community, as a matter of fact, recommended that the Attorney General should be made, by law, the legal adviser to the National Security Council.

This is a whole facet of those responsibilities upon which this committee has no information whatsoever.

So we find ourselves somewhat, as you find yourself, groping for answers. We have not really found them.

I appreciate the fact that you more or less took an objective view of your own case. I appreciate your comments on the way that you were received in the court. You said you had no reason to have any personal feelings about that.

But you are a member of the Georgia Legislature today?

Mr. BOND. Yes; I am.

Senator MATHIAS. You have had a great deal of experience there. You have been a member of that community for many years.

Do you have a feeling that, with greater leadership in that community in the early period, the State of Georgia might have moved any faster?

Mr. BOND. Quite surely, Senator. The city of Atlanta is proud of the leadership it has had over the last almost three decades, and it has been the kind of leadership which avoided a lot of the racial turmoil that other cities, both north and south, experienced. I do not speak here specifically of the school question, but of all sorts of racial questions—the integration of lunch counters, the integration of movie theaters, the integration of the public parks—and because the city's leadership was such that it demanded strict adherence to the law, there was little or no difficulty of the kind you have seen in other American communities.

If the same thing had been true in the State capitol during this period—and until very, very recently it was not—then Georgia would now enjoy the reputation which Atlanta enjoys as a city where people of different races get along better. I daresay, than they do any place else in the United States. But that leadership was lacking. We had a succession of Governors who appealed to the basest element of the Georgia electorate, who aroused passions rather than trying to diminish them, and they kept the State from being what it could have been.

Senator MATHIAS. Of course the reason this question is pertinent is because the Office of Attorney General requires, in my judgment, a great deal of leadership.

It is one thing to simply enforce the law. That is what you are paid to do. Any competent lawyer can enforce the law.

But that vital element of leadership, which should emanate from the Department of Justice, is an important part of what we are searching for, I think. As we look at the Office of Attorney General those are the considerations.

On the question of Atlanta and the Atlanta plan, there are some who have criticized it as having "sold too cheap." Do you have any comment on that?

Mr. BOND. I don't think I would characterize it in those words, Senator.

Senator MATHIAS. Those are not my words.

Mr. BOND. I understand.

I have five children. Two of them are in private schools and three of them attend public schools.

I am not as familiar with the litigation and its history as Attorney Haimes is, but I do believe that had the case proceeded in court, and had a larger or stronger remedy been sought outside the confines of the city limits of Atlanta, my three children who are in the public schools would be getting a different kind of education than they now are getting—an education which could draw on the tax resources of a larger section of the city and the county, an education which would throw them into daily contact with children different from them, and children who, when they get to be adults, they will have to live with in this world.

Blacks were inevitably going to take control of the school system. The process of having a majority black school board came about not because of negotiations set up between the NAACP and anyone, but because of the electoral process. The exchange of leadership in the administration of this school system would have occurred in any event.

One person has characterized that arrangement as the selling of the life chances of the children of the city of Atlanta for 18 jobs.

Senator MATHIAS. Do you have any feeling that the Atlanta Action Forum speech, which has been talked about at some length here, or any other activity of Judge Bell in that particular timeframe, was in fact improper or was bringing some sort of extrajudicial pressure on the parties to achieve a settlement which would not have been the ultimate conclusion if it had gone through the full judicial mill?

Mr. BOND. May Attorney Haimes answer that question?

Senator MATHIAS. Surely.

TESTIMONY OF MARGIE HAIMES, ATTORNEY, ATLANTA, GA.

Ms. HAIMES. I think that the Atlanta Action Forum appearance by Judge Bell changed the whole course of school desegregation in the city of Atlanta. At that time that appearance, of course, involved the Atlanta-only case. In June of 1972 there had been a metropolitan school desegregation case filed on behalf of black parents seeking the broader remedy, across desegregation city and county lines.

Two defendants of the Atlanta School Board had borrowed a map of the metropolitan area, which we had prepared. It was their pur-

pose to go to that meeting to propose to the Atlanta Action Forum—which basically is a power structure of Atlanta—to sell them on the idea of the Atlanta Board of Education becoming plaintiffs in our case.

This, of course, would have substantially strengthened the hands of the plaintiffs.

They were facing a court order by the Fifth Circuit Court of Appeals to desegregate at that time.

Judge Bell appeared for the purpose of discussing the school desegregation law in the fifth circuit, but according to his own admission went farther. He canceled the settlement——

Senator MATHIAS. What was his position with reference to litigation at that moment?

Ms. HAIMES. He was the fifth circuit judge on a three-judge panel on the *Metro* case.

Senator MATHIAS. Which was then pending in that three-judge court?

Ms. HAIMES. Absolutely. It was before him.

He was also a member of the fifth circuit, as you know, and the *Atlanta* case, had it gone on, would have gone on before him as a judge.

Senator MATHIAS. Briefly, what did he do?

Ms. HAIMES. What he did was to cancel the settlement of the *Atlanta-only* case, leaving the lawyers out of it, as I understand it. Of course I was not there.

When asked by people, that is the school board defendants, about the *Metro* case his response was that there could be a considerable delay in the *Metro* case, and in fact later they entered an order stopping us dead in our tracks. We remained stayed and were not permitted to move forward on the *Atlanta* case until after the *Detroit* case was decided.

So, basically he held back the metropolitan remedy urging the Atlanta Board of Education or the the *Atlanta* case to proceed to settlement.

I filed, in September 1973, a motion for him to recuse himself in the *Metro* case, and he had filed a response which is unreported. I have a copy here, and I would like to file that with the committee.

Senator MATHIAS. Mr. Chairman, I would ask that to be admitted.

Senator ABOUREZK. Yes; we will enter it in the record at this point. [The material referred to follows.]

IN THE U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF
GEORGIA, ATLANTA DIVISION

Civil Action No. 16708

EMMA ARMOUR, ET AL., PLAINTIFFS

v.

JACK P. NIX, ET AL., DEFENDANTS

RESPONSE AND ORDER ON MOTION TO DISQUALIFY JUDGE BELL

My impartiality, or at least the appearance of impartiality, has been challenged by counsel for plaintiffs in the within matter.

The legal basis for the challenge is not altogether clear. Apparently counsel is utilizing title 28 USC, § 144, which provides for the challenge of a judge in a district court before whom a matter is pending when a party makes and files an affidavit that the judge before whom the matter is pending "has a personal bias or prejudice either against him or in favor of any adverse party."

An initial difficulty with counsel's motion is that a challenge under this provision may not be made by a lawyer but only by a party. *Giebe v. Pence*, 9 Cir., 1970, 431 F. 2d 942. Compare *Anchor Drain Co. v. Smith*, 5 Cir., 1924, 297 F. 2d 204.

In the next place, even assuming that this district court statute is applicable against a United States Circuit Judge sitting on a three-judge district court, a doubtful proposition, the judge who is challenged must consider the sufficiency of the affidavit filed as a basis for the challenge. *Berger v. United States*, 1921, 255 U.S. 31, 36, 65 L. Ed. 481, 487. The affidavit here is entirely insufficient within the meaning of § 144 as it fails to make any claim of personal bias or prejudice against plaintiffs or in favor of defendants.

There is, however, another statute against which my qualifications should be tested. Title 28 USC, § 455, provides:

"Any justice or judge of the United States shall disqualify himself in any case in which he has a substantial interest, has been of counsel, is or has been a material witness, or is so related to or connected with any party or his attorney as to render it improper, in his opinion, for him to sit on the trial, appeal, or other proceeding therein."

An interpretation of this statute and the procedure to be followed by a judge who is challenged is set out in the statement of Mr. Justice Rehnquist in *Laird v. Tatum*, 409 U.S. 824, 34 L. Ed. 2d 550, where he responds in rejecting a motion that he be disqualified in the case.

Interestingly, both this statute and § 144, which, as discussed above, applies to personal bias and prejudice, are the subject of much discussion in the Richmond school case which sought metro school consolidation. There certain school board members of counties adjoining Richmond challenged District Judge Merhige on the basis that he was personally biased because, among other things, he had suggested to plaintiff's counsel that the Richmond school system be consolidated with those of the two adjoining counties. Judge Merhige refused to disqualify himself and his lengthy opinion on the subject is reported. See *Bradley v. School Board of Richmond, Virginia*, E.D. Va., 1971, 324 F. Supp. 439.

As an independent matter, I have carefully considered the disqualification requirements of § 455 and also whether I hold any bias against any plaintiff or in favor of any defendant within the contemplation of § 144. I have concluded that I am not disqualified for any reason asserted by counsel or for any other reason known to me or contemplated by law or the canons of judicial ethics.

Although the motion to disqualify could be denied without further discussion I think that each party in this case, as well as those in the cases consolidated with this case, are entitled to a detailed response from me with respect to the claims made in the challenge by counsel for the plaintiffs. School litigation is vested with a public interest of the highest order and no judge should, in the face of a challenge, sit or decline to sit in school litigation without giving reasons.

In the scores of school cases in the past 15 years within the Fifth Circuit there have been to my knowledge few, if any, judges who have left a school case or declined to sit on such a case. Certainly the burden of judging would be a great deal easier if disqualification in school cases were easily obtainable. Forum shopping would be encouraged, however, if the custom of challenging judges becomes widespread. Thus will be seen the wisdom of the rule in the Fifth Circuit that a judge has a duty to sit on a case unless he is legally disqualified. *Edwards v. United States*, 5 Cir., 1964, 334 F. 2d 360, 362-63. This is also the rule in the other circuits. Of course, a judge by his own initiative may recuse himself under circumstances where he is not legally disqualified but recusal should be only for substantial reasons.

The Atlanta school case has been in continuous litigation for some 15 years. Neither counsel challenging my impartiality, nor the plaintiffs named in the suit, nor the organization counsel represents are in the Atlanta case, although they are seeking, along with other national organizations, to intervene in that case at this time.

It is urged that I may have indicated partiality by recommending a negotiated settlement of the Atlanta school case to a biracial group interested in the case.

It is also contended that "lay persons [at the meeting] felt that I indicated [that] metropolitan relief would not be ordered in Atlanta". I have no way of knowing how the lay persons may have felt but I will state the facts of the matter.

This so-called metro case in which the challenge is presented did not begin until June 7, 1972. It was brought by black plaintiffs, residents of the City of Atlanta, to require the defendants, nine school systems in metropolitan Atlanta and the state school superintendent and state school board, to prepare a plan for the operation of the public schools within the group of systems, taken together, to result in schools and school districts which are not racially identifiable as one race schools or systems. The plan is to encompass student assignment, staff assignment, and faculty assignment. The systems included by plaintiffs in their prayer were the Atlanta, Decatur, Buford and Marietta City systems, and the Fulton, DeKalb, Clayton, Cobb, and Gwinnett county systems.

Thereafter plaintiffs in the Atlanta, Fulton County, and DeKalb County school cases, Civil Action Nos. 6298, 12889, and 11946, respectively, represented by the NAACP Legal Defense Fund, Inc., filed a supplemental complaint seeking the same type of relief but without including the Gwinnett, Buford, and Marietta school systems. (The Fulton and DeKalb cases had been inactive in the district court.) This proceeding has been consolidated, at least temporarily, with the case brought by counsel filing the instant challenge.

Meanwhile, the State of Georgia and some of the other defendants moved for a three-judge district court. Such a court was constituted under the applicable statute and I was assigned as its circuit judge member.

A good deal of time has been spent in determining the merits of plaintiffs' motion to dissolve the three-judge district court. We held a hearing on September 22, 1972, on the question of dissolving the three-judge district court. We indicated at the time that we would probably take no action in the case until the Supreme Court decided the Richmond metro case. Discovery problems arose and on November 17, 1972, we entered a formal stay of all proceedings in the matter pending the decisions of the Supreme Court in the Richmond and Detroit metro school cases, and the Denver school case. Following the decisions of the Supreme Court in the Richmond and Denver cases, we again considered, on briefs, the question whether to dissolve the three-judge district court. (The Detroit case did not reach the Supreme Court.)

Under 28 USCA, § 2281, an effort to enjoin the operation of a state statute of statewide import requires a three-judge district court. *Board of Regents v. New Left Education Project*, 1972 404 U.S. 541, 92 S.Ct. 652, 30 L.Ed.2d 697. Under 28 USCA, § 1253, an appeal from an order "granting or denying" such an injunction goes directly to the Supreme Court. *Gunn v. Committee to End The War*, 1970, 399 U.S. 383, 90 S.Ct. 2013, 26 L.Ed.2d 684. The question is thus whether the injunction sought by plaintiffs involves Georgia laws of statewide application rather than laws of local import only.

Accordingly, we overruled the motion to dissolve pending our assessment of the impact of the remedies sought on the Georgia Constitution and statutes. Our view was that the assessment could not be made until the case progressed to the point where the actual relief sought or necessarily included could be better understood. To that end we directed plaintiffs to describe the administrative concept or profile of the plan which would result if the prayers of the petition were granted. The matter is set for further hearing on September 26, 1973. As should be clear, we have not yet reached the merits of the metro cases.

The status of the metro litigation should be compared with that of the Atlanta school case in the early fall of 1972. On September 26, 1972, one of the members of the Fifth Circuit panel assigned to the Atlanta school case held a pre-hearing conference in my chambers in Atlanta with some of the defendant school board members, school officials, and counsel for the parties. As the Fifth Circuit panel recited in its order of November 24, 1972, it was indicated at the September 26 conference that a possibility existed for an agreed settlement of the litigation.

The panel then issued its order of October 6, 1972, stating that it was issued to guide the settlement negotiations. That order required, among others things, the desegregation of the remaining 15 to 20 schools in Atlanta having white or predominantly all white student bodies and a terminal student assignment plan.

Shortly after this order was issued and during the month of October, I agreed to present to an Atlanta biracial leadership group an overview of school de-

segregation as it then existed in the states of the Fifth Circuit. This group hoped to assist in resolving the Atlanta school case and was endeavoring to understand the requirements of school desegregation law. This meeting was a few days later.

There were 25 to 30 persons present at the meeting, about equally divided between the races. They consisted of many Atlanta leaders including the immediate past president of the Chamber of Commerce, the president of the Atlanta Chapter of the NAACP, the director of the Atlanta Urban League office (who is also chairman of the district court's biracial committee in the Atlanta school case), one and perhaps two national directors of the urban League, and a number of other outstanding black and white leaders of Atlanta. There were two defendant school board members present. One of the black leaders was a plaintiff in the Atlanta school case.

I presented a general synopsis of school desegregation law, beginning with the *Brown* decision and ending with the *Charlotte* and *Mobile* decisions. It was in substance what I had recently said at a meeting in Atlanta with the Augusta, Georgia school board and school superintendent in attempting to make a determination for the Chief Judge of the Fifth Circuit on assigning a judge to try them on a contempt citation for failing to carry out an order of the district court. (They later complied with the district court order.) I explained the responsibility of school board members and school systems to comply with the law as announced by the Supreme Court in the *Charlotte* and *Mobile* decisions and thereafter by the lower federal courts. I stated that Atlanta could take no comfort from the fact that many other large cities in America were not being required to desegregate their schools. I gave as reasons that there was no statutory school law, which meant the application of the law was subject to selective enforcement; that suits had not been brought in some cities, and in others, suits were dormant; and that Atlanta was still paying the price for having had a school system segregated by law.

I alluded to the fact that one problem in the Atlanta case had been the continuous litigation over a period of 14 years (at that time) with never an end and never a final decision. It was noted that this created uncertainty and instability and may have had a great deal to do with the decline in the white student population from 67 per cent in 1958 to 22 per cent (now 18 per cent), and to the loss of some 20,000 students from the system (now 27,000). I stated that it was very much in the public interest to bring the case to a final conclusion.

I noted that I had been in many school desegregation cases (involving at least 160 separate school systems); and had participated in the settlement by consent decree of a considerable number of such cases. School desegregation had been largely accomplished in these systems and in most systems in the Fifth Circuit. I pointed to the black and white leaders in several cities in the circuit who had taken the responsibility to bring about settlement of school cases in an effort to preserve public education (including by name one school board chairman and two lawyers representing the NAACP Legal Defense Fund, Inc., in other cities, as examples of leadership and lawyers with expertise in school cases). I had stated earlier that student assignment plans varied as between systems, depending upon several prevailing factors, and that the courts particularly needed help in large systems in arriving at sound assignment plans.

I gave the view that Atlanta had fallen behind several southern cities in resolving its school desegregation problem. Some of these other cities had recognized the fact that school desegregation was not something to be left only to lawyers but that it was the responsibility of the parties and the community to consider such litigation as public interest litigation to be as public interest litigation to be resolved without delay if we were to have viable public education.

Several statements were made by persons present. Two are important to the present discussion. The president of the NAACP stated that his group, which included the plaintiffs, had never been able to get the school board to seriously negotiate a settlement of the case. This was denied by one of the school board members who stated that the demands of plaintiffs had been too extreme.

One of the defendant school board members present then asked why the Atlanta case could not be further delayed through the medium of the school board joining the position of plaintiffs in the two metro suits. (As a school board member, he was already a defendant in those cases.) His idea was that there was not much that could be done in Atlanta, given its sparse white student population, and that the problem was one for metropolitan Atlanta.

I replied, as one reason, that the order of the Fifth Circuit had to be carried out without delay. I told him that in one of my cases, 32 school districts in Mississippi had been required, as a result of an order of the Supreme Court, to desegregate within 60 days and that they met this deadline. I stated to him that the Fifth Circuit had granted only one stay in a school case in the past three years.

I pointed out that the metro case was an entirely different case and that there might be considerable delay in resolving it. The reasons given for the probable delay were that the court was waiting for the decision of the Supreme Court in the Richmond case, and also that the Richmond order requiring metro student assignment had been reversed by the Fourth Circuit Court of Appeals. No one could know just how the Supreme Court would rule on the case. (Since then the Supreme Court has affirmed the Fourth Circuit in a 4-4 vote so the question remains unresolved.) I also noted that the Atlanta school case would, in any event, go by the board by being absorbed in the metro case for student assignment purposes should metro student assignment be required. I concluded with the statement that I considered the order of the Fifth Circuit to be reasonable under the existing requirements of law and that the school board should promptly comply with it.

The meeting ended on the note that the parties would begin to negotiate, and initially without lawyers, in an effort to finally resolve the Atlanta school case litigation. I had no connection with the subsequent negotiations.

There was no discussion of the merits of any of the cases at the meeting. There was no prejudgment, either express or implied, of counsel's case. The motion or suggestion that I disqualify is denied.

It is so ordered. This 21st day of September, 1973.

GRIFFIN B. BELL,
U.S. Circuit Judge.

U.S. DISTRICT COURT, NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION

Civil Action No. 16708

EMMA ARMOUR, ET AL. *v.* JACK P. NIX, ET AL.

Civil Action No. 6298

VIVIAN CALHOUN, ET AL. *v.* ED S. COOK, ET AL.

Civil Action No. 12880

EFFIE ARCALA HIGHTOWER, ET AL. *v.* PAUL D. WEST, ET AL.

Civil Action No. 11946

WILLIE EUGENE PITTS, ET AL. *v.* DR. JIM CHERRY, SUPERINTENDENT OF SCHOOLS,
DEKALB COUNTY, GEORGIA, ET AL.

MOTION

Come now the plaintiffs and respectfully move the Honorable Griffin B. Bell, the Circuit Court of Appeals member of the three judge panel, to disqualify himself from participation in this case on the following grounds:

I

In the fall of 1972, when issues of the Atlanta school case (*Calhoun v. Cook*) were on appeal to a panel of the Fifth Circuit Court of Appeals (said panel being three Judges other than Honorable Griffin B. Bell) and following argument in this case (*Armour v. Nix*) of a motion to dismiss and prior to the issuance of an order staying all proceedings herein, the said Honorable Griffin B. Bell, at the request of A. H. Stearn, attended a meeting of the Atlanta Action Forum

for the purpose of giving the group guidance or counsel on the Atlanta school situation. The Atlanta Action Forum is a biracial group of Atlanta businessmen and are not parties to either the *Calhoun* or *Armour* cases.

Present at the meeting were two defendants, Frank Smith and William Vanlandingham, Atlanta School Board members and one plaintiff, Jessie Hill. Defendants were at the meeting to give a report and their recommendation as to the school situation.

Messrs. Smith and Vanlandingham reported three courses of action and recommended that the Atlanta Board ask the Fifth Circuit Court of Appeals for a stay for a period of time and that the Board enter the *Armour* case as plaintiffs also seeking metropolitan wide desegregation.

Honorable Griffin B. Bell addressed the group; it was his counsel that the Atlanta case be settled by the interested parties, leaving the lawyers out of it.

Additionally, the Richmond, Virginia, case was discussed and lay persons present felt that Judge Bell had indicated metropolitan relief would not be ordered in Atlanta. An attorney present has advised the undersigned that he did not understand said comments to be an expression of opinion on the metro case (*Armour v. Nix*) but that the comments could have been so interpreted by lay persons.

Following said meeting Messrs. Smith and Vanlandingham met with Lonnie C. King, John Cox and Lyndon Wade. Subsequent negotiations just prior to a hearing in the Fifth Circuit on November 22, 1972, resulted in the first compromise settlement in the Atlanta (*Calhoun v. Cook*) case. During such period Lonnie C. King obtained powers of attorney from some of the original plaintiffs removing the case from representation by the N.A.A.C.P. Legal Defense Fund; he retained a local attorney to represent the group and presented an ex parte motion to substitute counsel to Honorable Griffin B. Bell in chambers in Atlanta, Georgia. (The settlement was not accepted by the court and the question of representation of the class, etc., was remanded to the lower court).

II

Our jurisprudential system is founded on the principle that a party litigant is entitled to a day in court before a fair and impartial judge.

The appearance of absolute impartiality is as important in preserving the confidence of the public in the justice of our system as is the fact of impartiality. This is especially true where the issues involved are of great public interest and concern and receive widespread reports in the news media.

There have already been both nationwide and local published reports of the Honorable Griffin B. Bell's role as set forth above in advising the settlement of the Atlanta school situation without further litigation. Many members of the public may conclude that such activity represents a prejudgment on the merits of the *Armour* case, inconsistent with their concept of an impartial and objective determination of issues. At a time of great public cynicism about government in general, Plaintiffs urge that every effort should be made to avoid any appearance of impropriety however much such appearance may be at variance with the facts. Beyond current concerns, this case involves constitutional rights of black and white children for now and future generations to come. The proper resolution of those rights, certainly of the highest order of difficulty in itself, should not be clouded in the minds of the public by any issues extraneous to the merits.

For these reasons Plaintiffs respectfully move that Honorable Griffin B. Bell recuse himself from proceeding further in this case and that another Judge of the Fifth Circuit Court of Appeals be named by the Chief Judge thereof.

Respectfully submitted,

MARGIE PITTS HAIMES,
Attorney for Plaintiffs.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion and Brief have been served on all attorneys of record.

This 14th day of September, 1973.

MARGIE PITTS HAIMES.

U.S. DISTRICT COURT, NORTHERN DISTRICT OF
GEORGIA, ATLANTA DIVISION

Civil Action No. 16708

EMMA ARMOUR, ET AL. v. JACK P. NIX, ET AL.

Civil Action No. 6298

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Civil Action No. 11946

WILLIE EUGENE PITTS, ET AL. v. DR. JIM CHERRY, SUPERINTENDENT OF SCHOOLS,
DEKALB COUNTY, GEORGIA, ET AL.

BRIEF IN SUPPORT OF MOTION TO DISQUALIFY

Comes now the attorney for plaintiffs and files this Brief in support of their motion to disqualify Honorable Griffin B. Bell.

I

Plaintiffs' attorney states that the motion in this case was made with extreme reluctance. It is fully recognized that a motion to recuse or disqualify a judge is extremely delicate for it pits the movant against the judge even though the judge is accused of no wrong doing. Plaintiff's attorney would state that the motion herein was made because of the importance of the case at bar and the importance that there is no doubt as to the impartiality of the judges who decide the issues.

It is not necessary to cite the history of school desegregation in Atlanta, nor is it necessary to set forth the bitter frustrations of the community or the courts that have resulted. It is enough to say all are caught in the frustrations. As plaintiffs seek to litigate these important issues it is imperative that they have a fair and impartial forum.

The motion herein stems from "an extra-judicial source and results in an opinion on the merits on some basis other than what the judge learned from his participation in the case." *United States v. Grinnell*, 384 U.S. 586 (1966). See also 28 U.S.C. § 144 and § 455.

Movants respectfully request the Honorable Griffin B. Bell to disqualify or recuse himself from further consideration of the issues in *Armour v. Nix, et al.*, as consolidated with the cases recited in the caption hereof.

Respectfully submitted,

MARGIE PITTS HAIMES,
Attorney for Plaintiffs.

Senator ABOUREZK. There is a vote on the amnesty question on the Senate floor and Senator Kennedy will act as chairman here while some of the rest of us go to vote.

Senator MATHIAS. Would you summarize?

Ms. HAIMES. This is not unlike what Judge Bell was involved in in the 1960's during the Vandiver years in which he counseled more time for the Atlanta case. He went to the plaintiffs, and you have heard their testimony, and you will have to decide that. But it was a delay strategy, and again the Atlanta settlement, in my view, was a delay strategy. We are more segregated today than we have been

before. We have a school system that is almost 90 percent black, and we are surrounded by school systems that are 90 percent or more white.

The matter that concerns me is that we not have an Attorney General or staff that involves itself in school desegregation cases behind the backs of the lawyers, leaving the lawyers out of it, because it results in parties asking me, for example, "Why is it that the judge goes to the power structure and does not come to us?" That creates an appearance of impropriety if not a violation of the Federal statutes.

Basically my motion for Judge Bell to recuse himself was based on the appearance of the impropriety because we felt that it removed him from the fair and impartial judge having dealt with the power structure behind the scenes on the case.

Senator KENNEDY (acting chairman). Mr. Bond, we want to welcome you. I regret I was not here earlier to hear the earlier parts of your testimony. We will read them.

I join in welcoming you and recognizing the very special role that you have played in awakening the conscience of the American people in the area of civil rights and social justice. I want to thank you for coming here and sharing your thoughts with us today on this important nomination.

I know labels don't mean a great deal. But Judge Bell has labeled himself a moderate. I am sure that you have reviewed the testimony in which he said he was more interested in keeping the schools open in Georgia at the time when there was serious threat of closing the schools.

Do you think that if Judge Bell had been in the tradition of Judge Tuttle, that there really would have been much difference in the pace of integration in the Georgia school system than there was?

TESTIMONY OF JULIAN BOND—Resumed

Mr. BOND. I am sorry. Is the question if Judge Bell had been——

Senator KENNEDY. More in the tradition of Judge Tuttle, Judge Wisdom, and others on the fifth circuit who have been generally recognized as very significant leaders in the march toward progress.

Mr. BOND. If Judge Bell had been in that tradition, Senator, we would have virtually little or no racial problems in the entire Southeast.

Senator KENNEDY. Why is that?

Mr. BOND. If you look at Judge Tuttle, Judge Wisdom, Judge Brown, Judge Johnson in the lower court, these are men who, despite their Southern birth, some of them, despite the temper of the times did not hesitate one moment to move with dispatch to set right what was wrong.

Judge Bell, on the other hand—and the record is mixed—in few cases moved with any dispatch at all. The school case in Taliaferro County and in another voting rights case—so far as I can determine from reading his record, he did not match the vigor which Tuttle and Wisdom and Brown and a few others moved to insure that the law be obeyed and enforced, and that constitutional rights would apply to all.

Senator KENNEDY. I suppose anyone with the benefit of hindsight would feel much as you do, who was very much involved in the whole movement.

In looking at just the opinions of the judge, though, how valid is the criticism of his performance on that court? If you look at the conclusions and the times he has been overruled by the Supreme Court, there were some important cases where he was overruled. But we have asked the NAACP and others to submit those particular cases.

How do you evaluate that record? It suggests, that perhaps Judge Bell didn't go as far as those that would want the speediest implementation of the *Brown* decision, but if you look back over the period of that time in terms of higher courts, or in terms of the Supreme Court, he was upheld a good deal more than he was overruled. What kind of value do you place on that, if any?

Mr. BOND. From a look at the record, Senator, it appears to me that it is neither a tremendously spectacular one or, on the other hand, a tremendously poor one. It is better than many of the other Federal judges in the region and not quite so good as the best.

The best have held up a standard that is difficult to follow, but I should like to think that the Attorney General would hold up a standard that other men would find it difficult to follow.

Senator KENNEDY. Well, that's a very fair and valid answer.

Let me ask you, Mr. Bond, this question. You are an extremely sensitive individual in the area of politics. How strongly do you feel about this nomination? What is your gut reaction to it?

Mr. BOND. Senator, it was difficult for me to come. Because I was not a supporter of Governor Carter early on in the primaries I had the impression that many people would think that I opposed Judge Bell simply because Governor Carter had nominated him. I had the feeling, Senator, that others would believe that because Judge Bell had kept me out of the legislature for a year, had negated the election that my constituents had participated in, that I held some personal enmity against him, and therefore for personal reasons wanted to prevent him, if I could, from becoming the Attorney General. So I did not want to come.

But I saw a quotation from him, I believe in the newspapers, in which he said, "The Atlanta blacks know me, and they are best qualified to judge me."

I knew that others were coming and would come. I wanted to let the committee know that there were some of us who like to think that when cabinet officers are named, that when Attorneys General are selected, or people are chosen for high office in the United States, the question can be asked, "Why not the best?"

I do not believe that Judge Bell is the best.

Senator KENNEDY. I do not think that anyone who has listened to you here this afternoon or heard your presentation, or listened to your responses to questions would say that anything but the finest motives brought you here.

We will have to recess very briefly for a vote on the floor.

[Recess taken.]

Senator ABOWREZK (acting chairman). I do not have any more questions, but Senator Kennedy and Senator Mathias are coming in now.

While we are waiting for them to take their seats, let me ask how many of the witnesses on the witness list are here and ready to testify?

Melissa Thompson, are you here?

Manuel Fierro and Jeffrey Segal, would you sing out your names if you are here?

Susan Kokinda? Willie Mae Reid? Beverly Moore? Onyango Sawyer?

Mr. SAWYER. Here.

Senator ABOUREZK. It appears that we have only two witnesses left after Mr. Bond is finished.

The hearing room will come to order, please.

Senator KENNEDY. Mr. Bond, you indicated in response to an earlier question that you think the Atlanta formula could have meant stronger quality education for the younger people in Atlanta today if there had been a different application or solution.

What was your reaction at the time the plan was first proposed? Did you view it as a retreat or a victory? Or did you look at it as an interim step?

Mr. BOND. If I can recall, Senator, I viewed it as a half victory. I mean that part of this negotiated settlement guaranteed that the black population in Atlanta immediately began to have some administrative say-so in the operations of our public schools. That was a victory.

It was participation in the running of the school system that we had long been denied.

But it was a half victory because it was a victory we could have achieved through the natural electoral process within the space of a few months. Atlanta's population is a majority of blacks. The school board is now majority black. The chairman of the board is now a black man.

They have the power to select the chief administrators and he or she has the power to select their subordinates.

So something was achieved through this negotiated settlement which could have been achieved through the normal course of events without any enormous delay of time, not more than a few months.

Second, the reaction at the time was mixed relief and disappointment. It is difficult to explain how those two emotions can exist together. There was a great deal of fear in the Atlanta community, both black and white, that massive busing might result from a continuation of the court suit.

Although I am one who believes that if it results in a better education for my children, I am quite willing to have them travel any reasonable distance. I do not think any parent wants to see his or her children travel long distances from their home.

So there was a mixed feeling. There are people who thought that the segregated system never had offered us the best education it could have and that this was that system made new. So there was a mixed feeling.

I can remember my emotions at the time as being mixed. All in all, I think I felt that this was only a temporary settlement at any rate. However bad or good it was, it would not last very long.

I wanted to say something further in response to another question you had asked, Senator, about Judge Tuttle. I know that Mr. Jaworski said that Judge Tuttle had recommended Judge Bell in 1960. It may be instructive for the members of the committee to seek Judge Tuttle out if he feels he may do so and to try, if you can, to determine what his opinion would be today.

Senator KENNEDY. Did you participate in any of the Action Forum meetings?

Mr. BOND. I do not move in those circles. Senator, I did not.

Senator KENNEDY. How representative was the black community that was participating in these negotiations of blacks in Atlanta?

Mr. BOND. It is difficult to say. I do not want to try to dodge it. The Action Forum is a small group of 40+ members, and no 20 men and women can represent an entire community.

At the time in question, one of the members was Mr. King, who testified before this committee. He was head of the NAACP, a position I hold now in Atlanta.

Mr. Calloway was a businessman; and Mr. Williamson, a member of the city council, and so on. I guess it was as representative a group as one could hope for.

One of the difficulties with groups like that, however, Senator, is that they meet in secret. They are not public bodies. They often make decisions for entire communities without any notice or input from the broad public.

However representative their membership may be, decisions made in secret behind closed doors in the meeting room of big banks are seldom the best decisions to be made for large groups of people.

Senator KENNEDY. It is similar to executive committee meetings of the Senate.

In relationship to the blacks of that group—

Mr. BOND. There were no poor people represented. There were none there, and I do not think there are now.

Senator KENNEDY. How would you characterize the unfinished civil rights agenda in terms of a new administration and a new Attorney General? What do you think are the legitimate expectations for black citizens in this country and also for white citizens?

What would be the areas of public policy you would want to see the next Attorney General take the strongest action in concerning the black citizens of the Nation?

Mr. BOND. Senator, we are the victims of massive unemployment and vestiges of the rigidly segregated system of the past which still exist in far too great abundance all over the United States.

I should think that, if you look at the composition of the votes that put together the victory for this administration in the first week in November, that they could expect nothing less than the full-fledged, vigorous, all-out commitment for the President and the Attorney General to completely eradicate all racial discrimination in the United States over the next 4 years.

That means not just in the public schools. It means not just having an Attorney General in the Department of Justice who will not insist on negotiated settlements, but on litigated settlements; on settlements that adhere to the law.

But it also means an Attorney General who dedicates himself and his staff to rooting out discrimination, racial and sexual wherever it is found. The employment situation for black people in the United States is catastrophic. The opportunities we have to earn livings for ourselves are minimal and few.

The opportunities for educational advancement for our children are increasingly being locked into a few center city schools that are unable to support themselves for their tax base.

We have vitally got to have an Attorney General who will insist that this stranglehold which grew up in the 1960's can now be broken. We came a long way between 1960 and 1960-1965. From 1968 on, a period of great slowdown and stagnation, we began to slip backward from the gains that we had won in the 1960's.

So we need an Attorney General who is not only going to help us catch them back up, but help us move to where we ought to be if that progress had not been interrupted and to finish these 4 years—what may be only the first 4 years of the Carter administration—with a record that suggests that in the White House and in the Attorney General's office that you had vigorous and militant defenders of the rights of all Americans to enjoy the fruits of this country.

Senator KENNEDY. Is part of your concern, Mr. Bond, that even if Judge Bell is indicating support for the Voting Rights Act or all the other civil rights acts which are on the books, that that is not enough?

Mr. BOND. Yes; that is not enough.

It is not enough just to obey the law.

Senator KENNEDY. As I understand the basis of your testimony, you might expect him to carry forward the letter of the law as the Attorney General. But what is really demanded at this time, not only within the black community but for all Americans, is stronger initiatives in the area of civil rights to assure the black citizens of the Nation real and full participation in our system of Government?

Mr. BOND. Exactly so. You had very eloquent testimony supporting Judge Bell a day or so ago from Mayor Cooper of Pritchard, Alabama. He discussed how Judge Bell did not always satisfy what he had gone into court to get Judge Bell did not always meet the expectations that he had raised in the briefs or the arguments that he made before him.

What I am suggesting is that we need an Attorney General that would satisfy Mayor Cooper. We need an Attorney General who will do precisely what innovative and bright, young civil rights lawyers like Mayor Cooper expect from a judge or an Attorney General, who is sworn to uphold the Constitution of the United States.

Senator KENNEDY. I want to thank you very much for your testimony. It has been very helpful to the committee.

Mr. BOND. Thank you.

Senator ABOUREZK (acting chairman). Senator Chafee?

Senator CHAFEE. Senator Bond, I do not think I am plowing old ground here. I have had to miss some of your testimony.

As you know, one of the perplexing parts of this hearing is that we have distinguished black leaders come in on both sides. It is hard to dismiss the testimony of either group. What is particularly per-

plexing, if you would, is the testimony of many of those who were on the scene at the time and went through the Atlanta school problems.

I am thinking of your fellow Member of the Georgia Legislature, Representative McKinney, who testified rather eloquently last evening. I think also of Warren Cochrane and Lonnie King. Mr. King was in the NAACP at the time that the Atlanta plan was adopted.

I do not believe you have been questioned as to this, and I would like your reaction to the testimony of those gentlemen who were strongly in favor of Judge Bell. What is more, they indicated that his solution in the Atlanta school situation had been to their liking and to the liking of their constituents to a substantial degree, although none of them said there was unanimity.

Mr. BOND. Senator, I can best explain their variance with what I have said by saying this. First of all, it is simply a matter of disagreement. They see Judge Bell and the Atlanta plan in one light; I see it in another.

But in addition to that I think if you look at what each of the Atlanta witnesses has said, including myself—the four of us who came from Atlanta—only one of them, Warren Cochrane, can speak to what I think is the central issue that has been raised in these hearings. That is this: What did Judge Bell do; how did he do it; and why did he do it when he was an adviser and counselor to Governor Vandiver?

Was he, as Mr. Cochrane suggested, bringing him information about what the Governor could or could not do? Or was he acting actively to counsel Mr. Cochrane to go slow, to tell the plaintiffs not to push their suit, to say, "I am going to work things out; don't worry about it; we are going to take care of it"?

That, I think, is the central question that those of us from Atlanta have raised. None of us know the answers; only Judge Bell knows. Only the men with whom he worked during that period know.

Senator CHAFFEE. That was raised with Mr. Cochrane as to what role he saw Judge Bell playing, and I had some concern that perhaps Judge Bell, if you want to put it in its worst light, was an emissary from the Governor to slow things down.

Mr. Cochrane indicated that they did not have the money at that time for a suit anyway. So, in fact, things went slow from Mr. Cochrane's testimony.

But then we take the present situation as to the role of the Sibley Commission, although that is not the present situation. But one of your colleges down there—

Mr. BOND. Morris Brown.

Senator CHAFFEE. Morris Brown College gave a degree and named Judge Bell man of the year and cited the Sibley Commission as the monument of his achievements.

I think we all know that honorary degrees are not the toughest things to come by in the world. But, nonetheless, you have got to put some stock in that.

Could you explain that? Are you in any way associated with Morris Brown?

Mr. BOND. I live about two blocks away from it, Senator. The year before they gave an honorary degree to one of your most distinguished

colleagues, the senior Senator from the State I am from, Herman Talmadge.

I was a college student at the time the Sibley Commission was operating. I testified before the Sibley Commission representing the then 4,000 students in the Atlanta University Center.

My testimony was that the schools in Georgia ought to be open and integrated at the same time. But I think our view of it was simply that it was a device by the Vandiver administration to not do anything at all. It existed to put off making any kind of decisions on the schools and to avoid and equivocate and delay as long as they could.

It did demonstrate that there was some sentiment in the State for keeping the schools open and for not engaging in the worst legal excesses that Governor Vandiver's rhetoric had suggested.

Our view of it then was that it was a delaying tactic. It was an attempt to find out what the people of the State of Georgia wanted before the legislature did anything. What the law of the land was was quite clear at that time. It was not subject to the study of a commission or the report of a poll.

We viewed it as a delay.

Senator CHAFEE. The Sibley Commission?

Mr. BOND. Yes.

Senator CHAFEE. By the way, you have not received an honorary degree from Morris Brown; have you?

Mr. BOND. No; not from Morris Brown College.

Senator CHAFEE. But others, I am sure.

Mr. BOND. Yes.

Senator CHAFEE. I think those are all the questions I have. Just in summation, your position is distinctly opposed to this nomination?

Mr. BOND. Yes; it is.

Senator ABOUREZK. [acting chairman]. Senator Sasser?

Senator SASSER. Mr. Bond, I wish to add my thanks to that of my colleagues for your being here today. I think you could be of great assistance to us in making this important decision.

I want to say to you that I looked you up in Who's Who this morning and was delighted to see that you are a native of my home, Nashville, Tenn. That makes me doubly grateful that you are here. I also noticed that today is your birthday. So, happy birthday.

Mr. BOND. Thank you.

Senator ABOUREZK. The committee votes 5 to 4 to wish you a happy birthday. [Laughter.]

Senator SASSER. I am also delighted to see you in company with my old law school classmate, Margie Pitts. I think she has another last name now.

I am at somewhat of a disadvantage. I had unavoidably missed the first portion, so I will confine my examination to one or two very brief questions which I think get right to the point. You may have covered them. If you have, I apologize for that.

Specifically, regarding the case that Judge Bell decided in passing on your qualifications to sit in the Georgia Legislature, do you feel, Mr. Bond, that his decision in this case was based on or influenced by racial prejudice; or do you feel that he was judging the matter on the basis of the Georgia Legislature having the authority to seat its own members?

I think that is the important question. If it was covered, I apologize for asking it again.

Mr. BOND. No; I have not covered it.

I do not think Judge Bell ruled in that case the way he did because he was motivated by any racial considerations. I think the legislature was motivated by racial considerations. I think Judge Bell was a victim of the temper of the times.

What happened then was not popular in Georgia, in the South, and indeed in the United States. I think Judge Bell was just a victim of the temper of the times.

I had two other occasions to come into Judge Bell's court. Both times he ruled against me. Once, he was affirmed by the Supreme Court.

Both the cases involved myself and a young man who was then a young minister, Andrew Young. We sued Ben Fortson, who was then and is now the secretary of the State, and the Governor of the State, whose name was Jimmy Carter. We lost.

Senator SASSER. Let me ask you one other question.

Do you feel, Mr. Bond, that Judge Bell was a moderating force in the State of Georgia in the field of race relations or a moving force behind desegregation during his tenure as an associate of Governor Vandiver and later on the Federal bench?

Mr. BOND. Senator, his record both as a judge and helping at least to promote the notion of a negotiated settlement in the school, as well as his role as an advisor to Governor Vandiver, is obscure. I do not know. I do not know what went on in meetings between him and the Governor.

I do not know what went on in every detail in the Action Forum. I do not know what role Judge Bell may have taken in urging the plaintiffs and the defendants to get together in the school case.

And it is because I do not know that I have questions about his fitness for this job.

The burden, Senator, is sadly on you and the members of this panel. You must decide. You must look at the evidence and hear additional evidence, if you will, about what happened then. That, in my view, is crucial to the vote that you are going to take.

Senator SASSER. Thank you.

I have no further questions, Mr. Chairman.

Senator CHAFEE. If I might, Mr. Chairman, I would like to associate myself with Senator Mathias' remarks about the Attorney General having to be more than just somebody who enforces the law. He should be very vigorous and take positive steps. You have commented on that. Senator Mathias has, too. I feel strongly in the same vein.

Senator MATHIAS. Very briefly, Mr. Chairman, in 1968 I supported Richard Nixon for President. In that year, you may recall, he had a slogan: Bring us together.

I must confess I was somewhat disappointed in my hopes with that "Bring us together" program. It sometimes happens that after Presidential campaigns, when the candidate becomes President, administrations fall short of the hopes that we have for them.

We have a tough job in this country. The cities are in trouble, both socially and financially. The job situation is not going to be easy to handle because it is not just that there is not enough work, but there are structural problems in our company which result in the kind of

aberrations where it is five times as hard for a young black to get a job as for a mature white.

We all have high hopes for the Carter administration. I do. I am very sincere in my hopes that it will be a great administration.

If this thing does not move as fast as I am sure you and I would like to see it move and if the cities continue to have problems and if the unemployment rate still drags along, the pressures will continue to be, as they have been in the past, upon the people at the bottom of the heap.

What is going to sustain their hope and their confidence and their patience through another period in which they are asked to wait a little longer while the pressure gets a little heavier?

Mr. BOND. I do not know, Senator.

The people whom you describe are people who do not vote in large numbers. They are not regular participants in the governmental process that is the electoral process. Yet, almost against all hope, they believe that it can work.

I believe they took great heart from the electoral victory last November of Governor Carter and Senator Mondale. They will look quite carefully, if not at the actions, at least at the results of his administration over the next 100 days or 300 days or several years.

If they see that no measurable change has occurred in their lives, then I think they have nothing then to sustain them. They are interested both in the substance and the act.

You here in this panel are engaged in both the substance and the act. These people badly need their hope confirmed. What will confirm it again if it is dashed, I do not know.

Senator MATHIAS. Of course, it is true that there is no substitute for a roof over your head and clothes on your back and a meal on the table. However, if you do not get all you want in the material sense, is it not true that it is important to have a sense of leadership, a sense of forward motion, and a sense of commitment? These mean a great deal to people who otherwise have very little.

Mr. BOND. That is true, Senator. It can help sustain you in the period while your roof is leaking and your job is lacking and your education not the best. It can help sustain you through difficult times. Leadership has done that and can do that and, hopefully, will do that again in the future.

I do not want to become a prophet of doom, but if the normal human expectations of a large section of the American population are not met, then they will respond in some fashion. They may respond by doing nothing at all, or they may respond in some other way; but they will respond.

Senator MATHIAS. So you put that element of leadership as a very important element in the immediate future?

Mr. BOND. Exactly so, Senator.

I think they also want to believe that their leadership comes to them without having to be funneled through the kinds of elites they have been used to in the past. They want to feel that they can aspire to be what anyone else in the United States can aspire to and that the same sorts of people who represent the same sorts of interests are not continually in the same sorts of positions, administration after administration, party after party, year after year.

Senator MATHIAS. You mentioned you and Congressman Young some years ago had occasion to sue Governor Carter. Could you tell us very briefly what the nature of that case was?

Mr. BOND. The suit was a suit against the Georgia election laws which required that there be a majority vote in elections for U.S. Senator or for the U.S. House.

That meant if there were a Democrat and a Republican and an independent candidate running in the general election——

Senator MATHIAS. That would mean that I would not be here today.

Mr. BOND. Exactly so.

We filed suit against that provision. I am not as familiar with the law as I ought to be, but in the first case I think Judge Bell said that we did not have standing, neither of us was a candidate.

In the second instance I am not sure why we lost, but we lost both times.

Congressman Young and Governor Carter have made up since then.

[Laughter.]

Mr. BOND. The second we were refused for timeliness. There was no pending election.

Senator MATHIAS. Thank you very much again.

Senator KENNEDY. Is there any special conclusion we should draw about these two cases where Judge Bell ruled the other way?

Mr. BOND. No.

I was just mentioning that the *Bond v. Floyd* case is not the only time I had come in contact with Judge Bell.

Senator KENNEDY. I again want to thank you very much for coming. It has been very informative and helpful testimony. I think it will be valuable for this committee and the Senate as a whole.

Mr. BOND. Thank you.

Senator KENNEDY. Your credibility and concern about these problems is commendable.

Mr. BOND. Thank you.

Senator ABOUREZK. Thank you.

Melissa Thompson, the National Organization for Women?

TESTIMONY OF MELISSA THOMPSON, NATIONAL ORGANIZATION FOR WOMEN

Ms. THOMPSON. Thank you, Senator Abourezk.

My name is Melissa Thompson. I am testifying in the place of Mary Jean Tully, who is president of our legal defense and education fund. Mary Jean apologizes, but she was here for 4 days and could not stay another day away from New York.

We would also like to add a note of our distress at the short time that all of us had to prepare for these hearings. There was little time between when we had to notify the committee of our wish to testify and the time when the nomination was announced.

Most of our sister groups found it impossible to relay back to all of the people they need to in order to come before you with any statement. So, much of what we have to say, many other women's groups are with us in spirit. I did want to add that note.

The National Organization for Women—NOW—is a civil rights organization of women and men. It is the oldest and largest women's organization in the new wave of feminism. Last year we celebrated our 10th anniversary.

We have more than 50,000 members and over 700 chapters in all 50 States. The fund, for which Mary Jean is president, is its litigating and educational arm. We are here today to speak in opposition to the nomination of Judge Griffin Bell to be Attorney General.

I must add that Mary Jean Tully did meet with Mr. Bell yesterday and found him to be very gracious and charming, but we still stand by our opposition.

In the short time available to us since December 20, we have devoted considerable time and attention to consideration of this nomination. As a result of that consideration, we urge the Congress to refuse to confirm this nomination, and we go on record by spelling out some of our reservations about Judge Bell.

At this particular point in American history, there is a great deal of emphasis on the concern many people have about the condition of the American economy. As a consequence of this concern, there seems to be a feeling in some quarters that the business of America is business, that the necessity to "get the economy moving again" is of such importance as to override all other considerations. Not so.

The business of America as it begins its third century is the same as it was when it began its first: freedom, democracy, liberty and justice for all its citizens. The very real worries about the state of the economy cannot be allowed to obscure the fact that there is still much unfinished business in the area of civil rights, that nothing this Government has to do is more important than administering justice.

It is necessary occasionally to stop and remind ourselves of this fact and to remember that 200 years after the founding of this Nation there are still substantial segments of the population who feel excluded from full participation in American society.

Women, for example, who make up 53 percent of the population of this country, still lack constitutional guarantees of equal protection—a lack whose significance was brought home to us again only last month with the Supreme Court decision on pregnancy disability benefits.

Millions of citizens suffer discrimination because of the color of their skin, or because of physical handicaps or because of their age. When they happen to be female as well, they are doubly disadvantaged.

The persistence of this kind of discrimination in American society constitutes a blot which no amount of economic prosperity can wipe out. Full stomachs and full employment are not insignificant goals, but I would like to remind you that throughout history brave women and men have sacrificed material prosperity and economic security and even their lives for goals which they deemed far more precious—goals having to do with freedom and justice.

We see the Attorney General's job as more than enforcing the law. He or she is responsible for justice, which is not necessarily the same thing. The Attorney General needs to be aware of whether or not laws on the books are really serving the end that they should. The

Attorney General should be an advocate of change when these laws are not.

Those of us who call ourselves civil rights activists have learned through long and sometimes bitter experience that our passionate concern for justice and our unlimited capacity for being outraged by injustice are not always shared by those people who are charged with the responsibility for enforcing equal rights.

We have developed standards for judging the fitness of particular individuals to carry out such responsibilities. What we look for, in addition to the obvious professional qualifications, are two things: first, a record of commitment to civil rights; and, second, a special sensitivity to the plight of those people who feel themselves to be the victims of discrimination. It is here that our reservations about Judge Bell arise.

When he says he will be fair, fair in the context of what? Does he mean in his experience and understanding of sex discrimination? We are not sure.

What are the indicators that we have used to gage the fitness of this man to hold this important job? There are primarily four: the issue of the private clubs; his support of Judge Carswell for the Supreme Court; his record on the Fifth Circuit Court of Appeals; and, finally, the opinions of others in the civil rights world whom we respect and who have a long familiarity with his record.

To address the issue of the clubs very briefly, let me say this. His reluctance to resign and his manner of resigning both indicate a failure to understand the nature and importance of the objections to clubs which discriminate in their membership against large segments of the population.

We would like to disagree with our friend Mr. Rauh who implied yesterday that, just because everybody belonged to clubs, it was part of the business and social structure. It is—very much so. But that does not make it right or proper. We stand very strongly against those people who maintain their membership in any such club.

The whole question of private clubs which are ostensibly social, but which in fact function as auxiliary places of business, has not really been dealt with yet in this country. But the main point with Judge Bell is what it says about his insensitivity to the kind of attitude implied by the mute acceptance of such exclusivity.

Were he a member but actively engaged in attempting to change the clubs' policies, that would be a different matter. There is no indication that this is the case. The old cliché—again to borrow from Mr. Bond—about people who are not part of the solution being part of the problem must apply in this instance.

Leadership positions in a domestic society carry with them certain obligations. For the man who would carry the major responsibility for the administration of justice in this country to be part of such an undemocratic institution really is unacceptable, yet Judge Bell announced that he would resign reluctantly and only under pressure.

It is ironic that the December 20 issue of *Business Week* mentions that the Justice Department is currently considering regulations which would forbid business payment of membership dues in clubs which discriminate against women for those corporations holding Federal contracts.

It seems to us that this would put Judge Bell in a very uncomfortable situation, prohibiting the behavior which he himself has shown to condone.

There is no need to dwell at length on the Carswell affair. I know that Judge Bell feels it will haunt him beyond his grave. I find his distinction between recommending Judge Carswell and endorsing him hard to understand. What is the difference? I do not know.

The fact is that he described Judge Carswell as being completely qualified for the job well after Judge Carswell's racist views were made public and were known to all.

NOW is one of the organizations that worked to oppose Judge Carswell's confirmation.

With regard to Judge Bell's record on sex discrimination while a member of the Fifth Circuit Court of Appeals the evidence is slim. But a record can be discerned by looking at the sex discrimination cases in the context of the larger body of race discrimination cases. There is only one title VII sex discrimination case on which he wrote the opinion. In that case he reversed the lower court finding of no discrimination on one charge and upheld it on three others. This is a mixed record but not terrible—but not what we would have liked.

This is similar to his actions in cases involving race discrimination also. Those who have studied the cases involving race tell me that there is a fairly consistent pattern of finding that the plaintiffs have failed to prove their charges, even in instances where the pattern of discrimination seemed blatantly clear to others. In many other cases, standards were established that allowed district judges broad leeway to find no discrimination present.

For women the other significant action by Judge Bell while on the bench occurred in *Weeks v. Southern Bell*, which is the landmark title VII case on women. He was responsible for setting the attorneys' fees in the landmark title VII suit. This was the first title VII suit involving sex discrimination to reach the Federal appellate level. It was a case of first impression involving years of work.

Although the going rate for attorneys at the time in court-awarded settlements was \$50 per hour, Judge Bell awarded the Weeks attorney, Sylvia Roberts, only \$25 per hour. The attorney in this case was a woman. This has had two unfortunate consequences. One, it has been cited in other cases to justify low attorneys' fees for civil rights cases. Two, it has had a distinctly chilling effect on other attorneys who were interested in going into title VII work in situations where they would be relying for payment on court-awarded fees. Probably, this affects the bulk of the title VII cases.

Senator MATHIAS. May I interrupt at that point to ask a brief question?

Are you telling us that the lawyers involved—those compensated at the rate of \$50 and those at the rate of \$25—were of comparable experience at the bar and with comparable qualifications?

Ms. THOMPSON. It would be hard for me to judge. The attorney in question is now regarded as one of the top attorneys in civil rights litigation in the country.

Senator ABOUREZK. Who won the case?

Ms. THOMPSON. Sylvia Roberts.

Senator ABOUREZK. NOW won the case?

Ms. THOMPSON. Yes; it was an *amicus* brief. Sylvia Roberts now works for the Legal Defense and Education Fund.

Senator ABOUREZK. Let me follow up. The woman lawyer who won the case was awarded \$25 an hour. What about the male lawyers who lost the case? What were they paid?

Ms. THOMPSON. I do not know. I am not a litigating attorney. But it was the first precedent in this kind of case where the attorney was awarded \$25 an hour rather than \$50 an hour.

I really am not prepared to go into whatever reasons Judge Bell might have had for awarding the lower fee.

Senator MATTHIAS. The reason I ask that is this: I wanted to see what kind of discrimination might have been involved so we would have some measure of just what it was all about.

Ms. THOMPSON. It is hard to say. I did not know Mrs. Roberts then, so I do not know. We now hold her in highest esteem. I suspect that we should have then, too.

May I go on?

Senator ABOUREZK. (acting chairman). Certainly.

Ms. THOMPSON. The whole matter of adequate legal representation for victims of discrimination is a very serious one. Title VII suits, for example, are enormously costly, usually involving extensive discovery and analysis of data. Even without attorneys' fees, the out-of-pocket costs in such lawsuits far exceed the ability to pay of most would-be plaintiffs.

Mary Jean Tully can testify from personal experience that the demand for attorneys who are willing and able to handle such cases is enormously in excess of the supply. One well-known feminist attorney, testifying in the hearings held by the Senate Judiciary Committee's Subcommittee on Citizens' Interest in 1974 on the effect of legal fees on the adequacy of legal representation stated that she had received more than 350 requests to handle such cases in the preceding 2 years.

Although I cannot prove it, I have a strong suspicion that there is no area of the law in which the supply problems are greater than in this matter of lawyers to take title VII cases. I think the Senate showed its understanding of that when it passed the attorneys' fees bill at the end of the 94th Congress.

Judge Bell's decision in the *Weeks* case clearly did not contribute to a solution of this serious problem.

Finally, in coming to a judgment about this nomination, we turned to our fellow activists from other civil rights organizations, as well as to civil rights lawyers who have practiced in the fifth circuit and who are familiar with Griffin Bell's record.

The reaction from these people was uniformly negative. Most of them are in positions where they are not free to comment publicly. However, their private remarks indicated considerable dismay over the possibility of civil rights enforcement being put into the hands of Judge Bell.

One who has commented publicly is Neil Bradley, staff counsel of the Southern Region ACLU, who said of Judge Bell: "It's very clear to me he will not be aggressive in the field of civil rights at all."

The effect of these negative readings, in combination with other considerations that I have mentioned, was such as to make us feel that

Judge Bell is an unfortunate choice for those people in the society who look to the Federal Government for leadership in the area of civil rights.

Again to paraphrase from Julian Bond and to paraphrase from President-elect Carter: Why not the best?

That is the question we are asking with regard to Judge Bell: Why not the best? After 8 years of malign neglect in the area of civil rights enforcement, we were expecting someone as Attorney General who could be counted on to give us vigorous action against discrimination.

Instead, we have a man whose nomination is opposed by the NAACP, the oldest and largest black civil rights organization in the country; a man whose exposure to sex discrimination cases has been so limited that we can hardly even make a judgment about his views on matters affecting more than half of the population; a man whose law firm has no women full partners and no black partners. It is a very, very large law firm, by the way.

Is this man the best person in the country to be handed the responsibility for the administration of justice? Clearly not—not in 1977.

We have the right to expect more from a President who made the kinds of promises that Mr. Carter did. People in the civil rights world took those promises quite seriously. They feel betrayed by a nomination that appears to put personal political interests ahead of the rights of millions of citizens.

In closing, I would like to take a few minutes to spell out the measures we will be using to judge the performance of President Carter's Attorney General whoever he or she may be. In the prepared statement, Mary Jean had said "he," reluctantly but realistically.

We will be looking at the following things:

First of all, at the appointments made to the Justice Department. Will there be significant numbers of women and minority males? Will they be appointed to key positions? When white males are appointed, will they be men who have demonstrated commitment to civil rights and a sensitivity to the issues? What will his standards be for these subcabinet positions?

Second, what about the sexist practices that currently exist inside the Department? Will they be identified and will there be efforts to change them? Will the Department continue to fight more vigorously on behalf of Government agencies accused of sex discrimination than on behalf of the victims of discrimination as many observers feel it now does? Will the Attorney General drop the Department's fight against the recent ruling that allows attorneys' fees for discrimination cases that are being fought at the administrative level?

What about enforcement of civil rights laws? We will be watching closely to see that the agencies and departments charged with enforcement of title IX, title VII, title VI, and other laws dealing with discrimination are doing their job. Will we see a continuation of the pitifully low level of enforcement we have seen in the past two administrations?

Will the Attorney General speak out on the importance of the passage of the equal rights amendment, especially its importance with regard to sex discrimination litigation?

He has indicated his support, but we do not see it as a strong support.

Will the Attorney General be supportive of our efforts to pass legislation to nullify the effects of the *General Electric* decision denying women disability benefits for pregnancy?

Will he take an active role in initiating and supporting congressional action designed to strengthen civil rights enforcement?

There are just a few of the questions that we have for the incoming Attorney General.

Finally, I understand that Carter aides are telling people not to judge Mr. Bell in advance, but to wait and see how he performs as Attorney General. In view of the absence of a proven commitment to civil rights and the kinds of doubts which exist in the minds of many people who are in a position to make a judgment, this does not seem like a reasonable request.

Therefore, we must oppose this nomination.

I would like to add that this is the year that we in NOW expect the equal rights amendment to be ratified. After it is ratified, within 2 years, all of the State legislatures must bring their laws up in conformance with the equal rights amendment.

This, to us, signifies the importance that the Attorney General will play in the next 4 years. Will we have an Attorney General who will see that the equal rights amendment is implemented fully throughout the land with a full commitment and full concern for the rights of women in this country?

I thank you.

Senator ABOUREZK [acting chairman]. Ms. Thompson, I would like to thank you for an excellent statement.

Senator Mathias, do you have any questions?

Senator MATHIAS. I would just like to thank you for your statement. I think it is a useful point of view.

Obviously, I am not directing this at you because you are here, you are standing up, you are being counted, and your voice is being heard. But in your statement you did mention those who did not have the same kind of courage. I understand the kind of pressures and difficulties that people have.

Ms. THOMPSON. There is no one who understands more than a NOW member in a place like Pocatello, Idaho.

Senator ABOUREZK. Is that where you are from?

Ms. THOMPSON. No: I am from Seattle, but we have members throughout the country suffer great hardships because of their membership.

Senator MATHIAS. I say this. I say it to myself as I say it to you and I say it to all of our fellow citizens. When we ask the question: "Why not the best?" it applies to things like that, too. There are people who are willing to put at risk a job or social relationships in a community.

I think this committee has to say "Why not the best?" in terms of testimony. Therefore, while I understand the difficulties people have in speaking up, I cannot give too much weight to these anonymous criticisms where people say, "While we don't think too much of Judge Bell, we will not stand up and say so."

I think it is very important that people care about this country and care a lot about the country. If they say to Governor Carter or if they say to the Senate, "Why not the best?" then I am going to say it right back to them. "Why not the best?" and let them stand up and be counted.

Senator ABOUREZK. Senator Sasser?

Senator SASSER. I, too, want to thank you for coming here today. You have not had any firsthand experience with Judge Bell?

Ms. THOMPSON. No; but we do have members of NOW in the Atlanta, Ga., area who have had experience with Mr. Bell. Is it mixed Senator SASSER. You say it is "mixed"?

Ms. THOMPSON. Mixed—mostly negative, but mixed.

Senator SASSER. I notice in your statement that you say, in talking about what sort of personnel that Judge Bell might wish to include in the Justice Department, you or Mary Jean Tully asked the question, "Will there be significant numbers of women and minority males; will they be appointed to key positions?"

You then go on to state this: "When white males are appointed, will they be men who have demonstrated commitment to civil rights and a sensitivity to the issues?"

Implicit in that statement, it appears to me, is that white males will be the only ones suspect.

Ms. THOMPSON. No.

White males. I am afraid, right now are in the position of being suspect; but NOW has never supported the promotion of women who have not demonstrated a commitment to the issues we feel are important.

Senator SASSER. I think we can agree that sensitivity to civil rights or matters of discrimination, whether it be by race or by sex, is something that men and women, white and black, do share.

I have no further questions, Mr. Chairman.

Senator CHAFFEE. I have one quick question.

You say that Judge Bell's law firm, King and Spalding, has no women partners and no black partners. Are you certain?

Ms. THOMPSON. That is according to information we have been given by several attorneys.

Senator CHAFFEE. In all fairness, Judge Bell has not been a member of the firm until recently.

Ms. THOMPSON. He was a member and then he recently rejoined.

Senator CHAFFEE. He was absent for 15 years. I must say I am astonished that there are no women partners. I can assume that there are some women associates but apparently no women partners according to your testimony.

Thank you.

Ms. THOMPSON. I do not believe Mr. Kirbo's law firm has any women partners either.

Senator CHAFFEE. That is the same one.

Ms. THOMPSON. Yes; excuse me.

We had some people down there, and I had forgotten.

Senator ABOUREZK. Thank you very much.

Manuel Fierro, president of the National Congress of Hispanic American Citizens?

Is he here?

Mr. FIERRO. Yes.

Senator ABOUTREZK. I would like to welcome you to the committee. You may go right ahead.

TESTIMONY OF MANUEL FIERRO, PRESIDENT, NATIONAL CONGRESS OF HISPANIC AMERICAN CITIZENS

Mr. FIERRO. Mr. Chairman and members of the committee my name is Manuel Fierro. I am the president of the National Congress of Hispanic American Citizens, a national nonpartisan citizens lobby for the Spanish-speaking people.

On behalf of our national board of trustees and 124 participating national and State and local Spanish-speaking organizations, I want to thank you for the opportunity to appear before you today regarding the nomination of Mr. Bell as Attorney General of the United States.

Let me say from the onset that for too many years now our Nation's Hispanic community has been denied access to many of this country's institutions and has been callously barred from the mainstream of American life. Our community has not been offered the same opportunity to share the benefits this country has to offer on the same basis as other citizens.

We have received more than our share of neglect and indifference in the past. It is not without cause that we have sought and have been able to obtain meetings with Mr. Bell regarding the many issues that confront our community today.

For generations the pervasive racial, ethnic, political, and economic discrimination that has been historically perpetrated against our Spanish-speaking community has been well known throughout our country.

This is just a small statement, Mr. Chairman. The main concern that I wanted to share with this committee today is that our community, our board of directors, our organizations are fully supportive of this nomination.

We have had the opportunity to meet Mr. Bell. Members of our community have had private consultations with him regarding the many issues that confront our community today regarding illegal aliens, regarding inclusion in the policymaking roles within the Department, regarding the Voting Rights Act as it applies to our community, and the many issues that will be presented before Congress this year. We have sought inclusion of these in many of the bills regarding our community.

Based on the discussions that we have had with Mr. Bell, our chairman has had the opportunity also to talk about the issues with Mr. Bell, based on that we would like to lend the support of our organization to this nomination.

It is a short statement. I do not have copies of the prepared statement. But I do want to be on record as supporting this nomination.

Senator ABOUTREZK (acting chairman). Thank you very much. That one man reminder. We do not need copies.

Senator CHAFEE. Mr. Fierro, I do not think there is a need to apologize for a short statement at this time in the hearings.

Have you had personal dealings with Judge Bell in problems in the fifth circuit, or are you speaking for the legal arm of your organization?

Mr. FIERRO. I personally have had no dealings with Mr. Bell, nor has the organization had any.

Members of legal groups in the country have had and have known of Mr. Bell. That is as far as I can say.

We have met with him. Representatives from the Mexican-American Legal Defense and Education Fund have met with Mr. Bell to discuss the many issues related to our community. This has just been since his recent nomination. That is the extent of our familiarity.

Senator CHAFEE. Since the nomination he has met with representatives of your group?

Mr. FIERRO. That is true. Based on those discussions and on the commitment that Mr. Bell has made regarding the lending of his full cooperation in dealing with the many issues confronting our community and the commitments that he made in the expressions of cooperation, we are lending our support.

Senator CHAFEE. Who initiated those discussions? Did your organization get in touch with Judge Bell, or did he get in touch with you?

Mr. FIERRO. Our organization made the initial contacts. We had personally written to Mr. Bell regarding those concerns he has expressed—the initial contacts were made by our organization in terms of sitting down with him prior to making any judgment.

Senator CHAFEE. Thank you.

Senator ABOUREZK. Senator Sasser?

Senator SASSER. I have no question, Mr. Chairman.

Senator ABOUREZK. Mr. Fierro, thank you very much.

Mr. FIERRO. Thank you.

Senator ABOUREZK. Our next witness is Jeffrey Segal of the board of directors of the National Lawyers Guild.

Is Mr. Segal here? [No response.]

For those witnesses who are not here when their names are called, you will be given an opportunity to provide a statement for the record.

[The following prepared statement of the National Lawyers Guild by Jeffrey Segal was made a part of the record.]

PREPARED STATEMENT OF JEFFREY SEGAL, NATIONAL LAWYERS GUILD

I am Jeffrey Segal, a member of the Board of Directors of the New York City Chapter of the National Lawyers Guild. I am appearing here today on behalf of the more than 5,500 members of the National Lawyers Guild throughout the United States.

I would like to begin by indicating to you the National Lawyers Guild's strong and unequivocal support for the statement issued by our colleagues in the National Conference of Black Lawyers and with that of the National Association for the Advancement of Colored People in their opposition to the appointment of Griffin B. Bell to become the next U.S. Attorney General.

We believe that Griffin Bell's appointment to the position of Attorney General would represent a serious blow to the rights of Black people in this country as well as a blow to the democratic rights of all U.S. citizens.

Our opposition to Griffin Bell concerns itself both with the specific attitudes and qualifications of the candidate as well as the effect such an appointment would have at this time in history.

We are, quite frankly, in a period of intense crisis. From the initial unraveling of the Watergate scandals to the now almost daily revelations of illegal acts committed by the FBI, the various intelligence agencies and many other branches of the Federal government it is clear that the next Attorney General is going to be faced with a series of most difficult tasks. This will require a person personally above reproach and of great commitment to the protection and extension of popular democratic rights. Griffin Bell, we feel, is neither.

Concomitant to this is a growing crisis in the area of civil rights. The years of the past Republican administration has done much to undercut the national legal commitment to equal justice and equal education. Through the activities of the Attorney General's office supported by recent decisions of the Supreme Court there has been a serious withdrawal of the Federal government from support for the demands of full citizenship for Blacks and other minorities. The present administration's views on busing, recent court decisions reversing programs aimed at the desegregation of public schools as well as decisions declaring affirmative action programs in admission to medical schools or hiring in police and fire departments unconstitutional have all added up to produce a climate of retreat in the area of civil rights.

In the midst of which comes the nomination of Griffin Bell. At a time in which there is needed a sign of recommitment to the struggle for full citizenship for all the incoming administration nominates a man whose record in the areas of civil rights and civil liberties is far from "superb." Bell has, himself, indicated that in these areas he is not planning a break with the policies of the past administration but rather a continuation and expansion of those policies. This, we fear, will lead to the wholesale abandonment of the democratic rights that have been won over the past 20 years.

Mr. Bell in his very first public appearance as a nominee lied. He was asked if he had endorsed Harrold Carswell's nomination to the Supreme Court and he replied:

"I didn't endorse him. I wrote a letter to the President saying I thought he was qualified to be on the Supreme Court. I don't think a judge ever endorses anyone. We're not in politics. I wrote a letter about his ability and his record."

His letter, however, can be viewed as nothing less than a full-blown unequivocal endorsement rather than a detached comment on Carswell's competence.

"This statement is in support of Honorable G. Harrold Carswell whom you are considering for confirmation as an Associate Justice of the Supreme Court.

"I have known Judge Carswell for 24 years and have frequently visited in his home as he has in mine. I am familiar with his career as a lawyer and a judge and with his personal life. His character and integrity including intellectual honesty, is of the highest order. His intellect and ability are also of the highest order.

"Judge Carswell will take a standard of excellence to the Supreme Court, based on many years of experience as a trial judge and the equivalent of two years as a Circuit Judge (considering sitting as a Circuit Judge with the 5th Circuit as a District Judge), which will substantially contribute from the inception to that court. His particular experience cannot be matched by anyone presently on the court and will fill a need now existing on that court.

I recommend Judge Carswell for confirmation without any hesitation or reservation whatever."

This is an endorsement of the highest level of a man which the Senate, itself, refused to confirm. However, beyond the mischaracterization lies the endorsement of a person to the position of Supreme Court Justice who declared in a speech that "segregation is the only practical and correct way of life in our states."

When confronted with this Bell's first reaction was to deny that he knew anything about the Carswell statement when he wrote his letter of endorsement. Bell told the press, "It turned out that he (meaning Carswell) had made a speech I didn't know about when he was running for the state legislature. Of course, I didn't know about that at the time."

Bell now admits that "reminders" of the speech were in all of the newspapers before he wrote his letter of endorsement and as such he was aware of the statement. Nevertheless, he recommended confirmation of the Carswell nomination.

We also view with much concern the controversy surrounding Bell's membership in three social clubs that have membership policies which excludes Blacks and Jews and affords membership to women as the wives of male members. Our

concern goes far beyond Bell's mere membership in such clubs but with what the membership and his reaction to the public outcry indicates about his own views. Bell has been a member of these clubs for over 20 years and as far as we know has never gone on record as being opposed in principle to the clubs' exclusionary policies. Not only has he acquiesced in these policies but since a law partner of his is the present president of the Capitol City Club, one of the clubs in question, it is most likely that Bell, Charles L. Gowen and other members of King and Spaulding play not a neutral role in these clubs but, on the contrary, exercise a large degree of leadership.

When Bell's appointment was made public and concern was expressed over the club membership Bell told the press: "I would be the Attorney General and would be the man who, in a sense, stood for equality before the law. It would be improper to be in the clubs then, and I would have to work something out." He then went on to say that when he became a member of these clubs, "I didn't read the bylaws back then. . . . Everything was segregated in those days, but now that I might be Attorney General I'm concerned, and will do something as soon as I can figure it out."

We find it a most serious problem that it took his nomination to the post of Attorney General to move him to "do something" about the club memberships; and, to do so only because "in a sense" the position of Attorney General stands for equality before the law. It is inexcusable that his has refused to indicate that there is anything wrong in such policies. That, in fact, his "temporary" withdrawal from these clubs is viewed strictly as a necessary political expedient.

Bell's long history of membership in segregated social clubs pales in comparison to his association with the administration of segregationist Georgia Governor Ernest Vandiver. Bell was a close associate of Gov. Vandiver and while it is impossible to document the complete extent of his participation in Vandiver's administration a number of specific items can be pointed to with authority.

(1) During the week of Nov. 11, 1958, Governor-elect Vandiver sent a team of four lawyers to Virginia to gather information on massive resistance tactics being used there against school desegregation. Griffin Bell was one of these lawyers. On returning Bell and the others conferred with Vandiver on new legislation to prevent integration. The Atlanta Constitution reported that Vandiver "and his legal advisors concede that the present Georgia laws are not sufficient to maintain segregation in the light of recent court rulings", and that "his advisors will present new school segregation laws to the January legislature." (Atlanta Constitution, Nov. 18, 1958)

In December 1958 these four lawyers visited other southern states to learn about their anti-integration tactics, and upon return conferred with Vandiver.

(2) Vandiver was inaugurated on Jan. 12, 1959. Bell became his chief of staff. Immediately thereafter Vandiver proposed a package of six segregation bills, which he described as based on a study by the "best legal minds in the state." Bell claimed and was generally given the credit for having fashioned this legislation. The proposals, which were immediately enacted, included the following:

(a) An act giving the Governor the power to close public schools to prevent integration.

(b) An act giving the Governor the power to close any unit of the University of Georgia to preserve "good order."

(c) An act providing tax credits for contributions to private schools.

(d) An act setting an age limit of 21 for entering state college and 25 for state graduate and professional schools. This was adopted because in the past most Black applicants to white colleges in Georgia and elsewhere in the South had been over these limits.

(e) An act establishing a Commission on Constitutional Government. This was what was known at the time as a "state sovereignty commission", whose purpose was to foster segregation through proposing legislation, constitutional changes and litigation tactics, and by circulating segregationist propaganda. This Commission replaced the Commission on Education, which had a similar function.

(f) An act barring the use of taxes to pay for integrated schools.

(3) In June 1959, the Federal District Court ruled that the Atlanta schools would have to desegregate. Vandiver announced he would close them down to

prevent it. In July 1959 a series of meetings were held in the Governor's mansion to formulate new segregation tactics and propose new segregationist legislation. Bell was one of the five attorneys involved.

This then was the background that Bell brought with him when he was appointed to the Fifth Circuit Court of Appeals in 1961. In the course of Bell's 15 year tenure on the Fifth Circuit many of our members have had the responsibility of representing clients before Bell and much of our concern comes as a result of these encounters.

It would be impossible in a short statement to deal adequately with the record of the Fifth Circuit and Bell's participation in that court over the years that he was a judge; however, we would like to point to a number of decisions in which he participated because we feel they represent Bell's views in areas of grave importance.

Let it be said at the outset of this section of our presentation that the record of the Fifth Circuit in the late 1950s and 1960s was one that exhibited great strength and vigorous support for the struggle for civil rights. This record, however, the diligent leadership of such Judges as Wisdom, Tuttle and Goldberg and is a record that finds Griffin Bell wanting. Bell was continually one of the "swing judges" on the Fifth Circuit when it came to civil rights cases. He frequently voted with the majority whether it was for or against civil rights. His record in general is undistinguished remarkable only in that there is no case in which he wrote a pro-civil rights dissent when the majority decided against a civil rights case.

Bell also made extensive use of the special concurring opinion. This device allowed him to vote with a pro-civil rights majority and then write an opinion disagreeing with the majorities legal theories. Since they were not cast as a dissent the opinion could be relied upon by judges and the losing party on remand and since his vote was recorded with the majority he could claim to have favored a civil rights position. These positions were invariably taken in situations where his vote was unnecessary to the composition of the majority. Bell filed numerous special concurring opinions in cases upholding civil rights in his years on the federal bench.

In the area of voting rights, one that has been claimed to be an area of strength for Bell, his record is mixed. While he joined in the majority opinion upholding the Voting Rights Act of 1965 and while he wrote the majority decision in *Toney v. White*, 488 F. 2d 310, he has as often as in the case of *Kirksey v. Board of Supervisors of Hinds County*, 528 F. 2d 1297 voted in favor of continuation of discriminatory restrictions on voting rights. Of critical concern in the area of voting rights was Bell's written opinion upholding the Georgia legislature's refusal to seat Julian Bond in 1966 because of his support of a statement made that year by the Student Nonviolent Coordinating Committee (SNCC) opposing the war in Vietnam.

Bell, in his majority opinion, characterized the SNCC statement as a "call to action based on race; a call alien to the concept of the pluralistic society which makes this nation." He then went on to say, "The call to action, and this is what we find to be a rational basis for the decision which denied Mr. Bond his seat, is that language which states that SNCC supports those men in this country who are unwilling to respond to a military draft. . . . The SNCC statement is at war with the national policy of this country. . . . We are committed in Vietnam."

Anthony Lewis characterized the opinion in a column in the New York Times on Dec. 30 in this way. "A legislator has less right to free speech than a private citizen, the opinion reasoned, because he takes an oath to support the Constitution. The court said the Georgia House could properly find Mr. Bond's endorsement of the SNCC statement inconsistent with the oath, and could exclude him.

"That decision was quickly and unanimously reversed by the Supreme Court. Read today, just 10 years later, it seems like something from the dark ages of judicial jingoism during World War I. No one would bother to read it such an anachronistic, discredited opinion now—except that it so recently was the considered judgment of the man named to be the next Attorney General of the United States."

One of the most basic rights of a democratic society is the right to go to the polls, freely vote for a candidate for public office whose politics you agree with and expect that if that candidate wins he or she will be seated by the representative body to which you elected him. The framers of the Constitution felt so strongly about this right and were so influenced by the attempts of the English

Parliament to deny a seat to Cobett that they explicitly wrote into that document the only three criterion that a person must meet to be elected to Congress. Most of the State of the Union have similar clauses in their constitutions and it represented a major threat, recognized by all nine members of the Supreme Court, that an attempt was being made to exclude someone from the Georgia legislature on the basis of Constitutionally protected speech.

In the area of school desegregation he has consistently followed a course of conduct designed to hold to a minimum the achievement of school desegregation. He recently reiterated his position in opposition to busing when he stated to the press that he intended to continue to present administrations views in this area. In *U.S. v. Jefferson County Board of Education*, 380 F. 2d 385 (1967) the majority of the Fifth Circuit handed down a strong opinion holding that school districts have an affirmative duty to bring about integrated, unitary systems, and upholding the Health Education and Welfare Guidelines setting percentage requirements for school desegregation. This opinion had nothing to do with busing but a variety of techniques for integrating a school system. Bell dissented in this case referred to the HEW Guidelines as "compelled integration" and "compulsory integration" and denounced the Guidelines as an interference with personal liberty.

In *United States v. Austin Independent School District*, 467 F. 2d 848 (1972) the Fifth Circuit reversed a District Court decision rejecting the HEW proposals for school desegregation, and ordered effective relief to convert to a unitary system. The court particularly denounced the closing of all Black schools which put the burden of desegregation on Black students, and approved busing to achieve desegregation. Bell wrote a notorious special concurring opinion stating that the District Court did not have an obligation to eliminate all one-race schools and that busing should be minimized. Bell's opinion so outraged the liberal, pro-civil rights wing of the court that those judges took the unusual step of writing a separate opinion to denounce Bell's special concurring opinion saying that it was written "as if there were no record before the Court" and that it "consists of abstract admonitions most of them old-hat to this Court, so general as to be unrelated to the facts and the issues in this case." The called Bell's view that there was no obligation to eliminate system-wide segregation "destructive" and his language "blatant euphemisms to avoid desegregating the system, preserving the whiteness of certain schools . . . It is said that it (Bell's opinion) marks a turning point for this Court. It is the first backward step for a Court that has labored mightily to follow faithfully the mandates of the Supreme Court and of Congress in the fields of civil rights."

Bell has done all that a lower court judge could do, and more than most have been able to do, to circumscribe the remedial principles and the scope of public school desegregation.

In an area of civil liberties concern—that of abuse of the Grand Jury process Bell's record is also extremely bad. Bell was one of a three-judge panel sitting in the case of *Tierney v. U.S.*, 465 F. 2d 806. Bell, in writing for the majority upheld the continuation of a contempt of court citation of five men in spite of a spate of constitutional claims that the Supreme Court had just upheld in the case of *Russo and Ellsburg v. Byrne*. Bell's opinion in this particular case is so opaque as to be unintelligible.

A feature of this case involves government wiretapping of one of the counsels for the defendants. Bell, after reviewing the logs of the overhear in camera decided that they were irrelevant to the case and denied defense the right to an adversary hearing. These same logs were released pursuant to an entirely different case a number of months later and it was discovered that the contents of the overhear conversation concerned the defense in the Grand Jury case.

In our study of Bell's record concerning employment discrimination, consumer rights, and access to the federal courts we have found that Bell has consistently voted or written opinions narrowing, cutting back and circumventing the development of needed democratic rights. We find on the basis of Bell's record a man whose control of the Department of Justice would be a serious defeat for all Americans concerned with equal rights and justice.

Senator ABOUREZK (acting chairman). Our next witness is Susan Kokinda of the U.S. Labor Party.

TESTIMONY OF SUSAN KOKINDA, U.S. LABOR PARTY

MS. KOKINDA. Mr. Chairman and members of the committee, the U.S. Labor Party opposes the nomination of Griffin Bell. The reasons thus far advanced in opposition by all previous witnesses has dangerously obscured the real issues.

For that reason I am going to deviate from my prepared remarks because I think it is important that these issues be more fully clarified.

The issue here is not racism. There is no question that Judge Bell has taken actions that have stood in fundamental contradiction to the rights of black Americans. But if we are to talk about racism in the Carter administration, let us not stop with Griffin Bell. We must first talk about the international economic and political policies which that administration is committed to.

These are policies which will be genocide for millions of Africans, Latin Americans, and Asians. These are policies which aim to provoke war in southern Africa, which seek to inflame a new war of the Pacific and Latin America, and which seek to renew the bloodshed in the Middle East.

As Labor Party spokesmen have detailed and documented in testimony before other Senate confirmation hearings during the past week, the Carter administration is dominated by David Rockefeller's tri-lateral commission on which sits Carter, Mondale, Vance, Blumenthal, Brzinski, Andy Young, and approximately eight others at this count.

The administration's fundamental policy commitment is the maintenance of Wall Street's debt structure at all costs. If this means looting the real productive base of the world economy, its industry, its agriculture, its labor force, so be it.

The role of an Attorney General in such an administration must be the hired gun backing up the debt collector. Let us be specific. The Attorney General, along with the Secretaries of Health, Educational, and Welfare, and Treasury, will have general oversight responsibilities for the Federal Law Enforcement Training Center in Georgia. This center, ostensibly a training ground for the Alcohol, Tobacco, and Firearms agency of the Treasury Department—FDA under Agriculture, et cetera—is, according to sources in the intelligence community which have stepped forward to us, currently the locus of a reorganization of the intelligence community.

This reorganization will more closely interface lower Manhattan's private and quasi-private intelligence arms such as Interpol and the Institute for Policy Studies with official National Security Council directed enforcement.

Senator ABOUREZK (acting chairman). Whose intelligence arm is the Institute for Policy Studies?

MS. KOKINDA. The National Security Council.

We have attempted to step forward in front of many committees in this Congress with documentation to that effect. I would be very glad to provide it, if you so desire.

Senator ABOUREZK. Mark Raskin would be very surprised to hear that.

MS. KOKINDA. I am sure he will be very surprised to hear it said in the Senate.

According to our source, the Federal Law Enforcement Training Center is currently acting as a command center for various assassination teams and for the deployment of the trilateral commission's drug and gunrunning apparatus.

If any of you are skeptical about the interface between private and public intelligence networks, I would suggest that you refer to the testimony given on Tuesday before the Senate Foreign Relations Committee by former U.S. Ambassador to Chile, Edward Corey. He detailed for over 1 hour the direct relationship between David Rockefeller's multinational groups and the Federal Government's activities in Chile. He specifically detailed the role of such people as the late Robert Kennedy and others in inviting David Rockefeller's private intelligence apparatus into the covert activities of the U.S. Government.

If anyone else is skeptical about the drug and gunrunning capabilities that are associated with Federal law enforcement arms, I again refer you to attempts on our part to bring witnesses, some formerly associated with the intelligence community, before the Senate and the House to testify in great detail to that effect.

A byproduct of the reorganization of the intelligence community—bringing again these quasi-private apparatus into the Federal apparatus—must be the Watergating of honest law enforcement agencies, both on a national and a local level, who think it is their duty to stop gunrunning and drugrunning rather than to propagate it.

Internationally this apparatus is already in place. In the past month no less than six political assassinations have been carried out in Paris, Greece, and the Mideast. In each case it has been against leading spokesmen or negotiators for a new world economic order or a peaceful Geneva settlement in the Mideast.

I might add the Institute for Policy Studies was identified, not by name but by personnel, by sources in Greece who were the subject of one of those assassinations.

Domestically, we can expect the Attorney General, looking through this training center and other apparatus, to act as a deployment center for terrorism, especially National Security Council-directed nuclear terrorism, and for an increased flood of drugrunning in the country. This will parallel Carter administration personalities such as Dr. Peter Born's attempt to legalize various forms of drugs and narcotics.

These networks give the trilateral commission a two-pronged ability. One is of terror and counterterror. You create the terror, and then you come in with an enhanced police apparatus to take of it.

Second, to generally erode the political fiber of the country as a whole and its ability to resist the zero growth deindustrialization policies of the Carter trilateral administration.

Judge Bell's background qualifies him to administer such an apparatus on at least two counts.

First, his role in the civil rights movement in Georgia; and, second his role in the reorganization of the Georgia law enforcement apparatus qualifies him.

On the first, we look at Judge Bell's record. It goes back and forth. On one moment he is supportive of massive resistance or supportive of people who obtain to that position. On another moment, he is

placing 33 school districts in Georgia under receivership for enforced desegregation. On another moment, he may be opposing a particular action of desegregation.

What does this mean? This is not a contradiction.

It reflects the conscious needs of lower Manhattan in the early 1960's. Knowing that the shrinkage of the real productive base of the economy, starting in 1957, would most immediately affect the black population in this country and would provoke political resistance, lower Manhattan forces through especially the Ford Foundation and personalities such as Joseph Rauh, who was here yesterday, and others, intervened to shape the civil rights movement in such a way as to provoke the most confrontation and divisiveness; and to insure that the black population in this country, as their capability to actually enter an expanding productive economy shrank, to insure that the black population was diverted from the real cause of the discrimination against them.

On the second front, in terms of reorganization of the law enforcement apparatus, Judge Bell through a series of investigations demanded programs which would destroy the fundamental freedoms guaranteed under the U.S. Constitution and Bill of Rights. I refer here to his position heading up the Atlanta Crime Commission, which made specific proposals for reorganizing the State's criminal justice structure and later—not his direct participation, but certainly his input into the Georgia Crime Commission, which again cooperated in the Law Enforcement Assistance Agency reorganization of the State of Georgia.

Again, this is the same point that was made earlier. In order to deploy terror counterterror apparatus against the population of this country, you must Watergate and streamline and reorganize honest law enforcement officials in this country to insure their hands are tied in doing anything to this effect.

My written testimony, which I think you have, details the recommendations that come out of these two commissions in more detail. We ask that it be submitted for the record.

[The prepared statement referred to follows.]

TESTIMONY OF SUSAN KOKINDA, U.S. LABOR PARTY

Griffin Bell has, throughout his judicial career, sought to destroy the rights and liberties guaranteed by the U.S. Constitution, and has been personally involved in criminal conspiracies which have brought great harm to citizens of the United States. Rather than be allowed to hold this nation's highest law enforcement post, Mr. Bell should be disbarred for actions that are designed to turn the legal system of the United States into the enforcement apparatus of a police state.

In fact, Mr. Bell's expertise in the creation of a full-fledged police state in this country, under a Trilateral Commission Administration appears to be the major contributing factor in the choice of Mr. Bell, whose personal moral philosophy—as exemplified by his strenuous support for the Supreme Court nomination of Harrold Carswell—certainly cannot be considered a qualification for high office. Since his early legal career as a member of the Atlanta law firm of King and Spaulding (the legal counsel of the Coca-Cola Company, whose president, J. Paul Austin, has been Jimmy Carter's political mentor), Bell supported the use of troops to quell provoked integration riots at the University of Georgia.

After he became a member of the Fifth Circuit Court of Appeals in 1960, Bell continued this inflammatory line. Bell set the precedent for federal judges to put school districts under receivership to implement desegregation rulings. At one point, Bell boasted that he had 33 Mississippi counties under receivership. As you will remember, the Bell precedent for the de facto judicial takeover of local governments was used recently in Boston, Massachusetts by Judge Garrity in a fashion which clearly contributed to racial violence in the city.

In at least one instance, Bell is credited with publicly convincing a school board not to join a desegregation suit, a move which created major tension in Georgia. Bell was hearing a desegregation suit for the City of Atlanta brought by the ACLU, when he was invited to speak at the Atlanta Forum on the legal aspects of the case—a highly improper act for a judge in itself. At the meeting Bell convinced the City School Board not to join another ACLU cases for desegregation of the district, thereby sabotaging the ACLU's ability to win that county case.

At the same time Bell laid the basis for turning Georgia into a model police state as soon as Jimmy Carter took over the Governorship. The apparatus created by Bell in Georgia is the framework which the Trilateral Commission intends to implement nationally under Bell's aegis.

Through a series of investigations Bell demanded programs that would destroy the fundamental freedoms guaranteed under the U.S. Constitution and Bill of Rights. In 1965 Bell headed up the Atlanta Crime Commission which made specific proposals for reorganizing the state's criminal justice structure. These were all implemented when Jimmy Carter became governor in 1970. Specifically the Atlanta Crime Commission called for—

- Classification centers to profile prisoners and channel them into prison programs for brainwashing or use as labor;

- Vocational training centers that created and directed a cheap youth labor pool; and

- Alcoholic rehabilitation centers which under the guise of treating a medical problem, conditioned prisoners into docility and then released them into specific jobs.

Two years later, the Georgia Crime Commission was established which completely overhauled the Georgia criminal system using funds from the Law Enforcement Assistance Administration, the federal program through which the Rockefellers have created a large part of their police-state apparatus. At this time Bell was still a federal judge and it would have been inappropriate for him to have publicly participated in the designation of programs to be funded via the LEAA. However, Jim McGovern, the director of the program has declared that he had extensive contact with Bell throughout the period of 1967-74 when McGovern headed the program. "His input was on it," said McGovern. "I met with him and discussed our program with him and was guided accordingly."

The Georgia Crime Commission established the following, with funds from the LEAA—

- Added Georgia criminal records to a national system of criminal files—a 1984 style profile apparatus;

- Created the Judicial Council which revamped court systems and monitored judges' decisions creating conditions under which independent judicial decisionmaking was impossible;

- A mandatory sentencing program was established which prevented judges from any original decision-making;

- A drug abuse program was created through which addicts were turned into controlled zombies, to be deployed by the LEAA; and

- Established vocational training programs and pre-release programs where youth were funnelled into designated jobs.

As a federal judge, Bell has concentrated on revamping the court system, to eliminate the ability of Americans to have a fair trial anywhere in the U.S. As a leading member of the Federal Judicial Center, the research arm of the U.S. Supreme Court, Bell has worked with the Russell Sage Foundation (a major think-tank of the Rockefeller family) and John J. McCloy (a leading Wall Street lawyer and former Chase Manhattan board member) in forcing through a system of mandatory prison sentences. This would destroy the concept of justice as established in the U.S. Constitution and reduce judges to rubber stamps. Senator Edward Kennedy has already prepared legislation demanding mandatory

sentencing under the theory that prisons should be for punishment not rehabilitation.

Last year, the Federal Judicial Center proposed a Court of Appeals that would handle cases normally evaluated by the Supreme Court, in effect eliminating the functioning of the constitutionally mandated highest court.

Bell has also headed up an Ad Hoc Committee of the Center which has been evaluating how to eliminate convicts' right to petition. He has also been a member of the American Bar Association's Commission on Standards and Goals of Judicial Administration which has advocated rapid court action, reducing a person's ability to have a fair and adequate trial.

Ms. KOKINDA. To conclude, the United States stands at a branching point right now. The rest of the world, led by Italy, the OPEC countries, with increasing support from Western Europe, the Soviet Union, is offering a chance for a new monetary system based on real production, based on increasing wealth for the world's population. They are offering to the United States to join in to that New World economic order.

That New World economic order stands in fundamental contradictions to the interests of the trilateral commission and the forces associated with lower Manhattan. The role that the U.S. Senate and House of Representatives must take in this period is to decide which way you will go. I speak not only of the rejection of the confirmation of many of the Carter appointees, but whether you are going to join with the rest of the world in entering a new era of peace and prosperity. It is immediately on the horizon.

Will you instead cling to the policies of a bankrupt monetary system, deindustrialization, zero growth, and slave labor and the consonant infringement on civil rights which that implies?

That is the choice which faces every Member of the U.S. Congress. That is the choice we are posing to the American population.

We have no doubt as to where the American population will go in this. We hope the U.S. Senate and House of Representatives will follow in the best interests of this industrial democracy.

Thank you.

Senator ABOUREZK. Any questions?

[No response.]

We thank you.

The written material supplied by Ms. Kokinda will be made a part of the record.

Willie Mae Reid, Socialist Workers Party?

[No response.]

Beverly Moore, director for Citizens for Class Action Lawsuits, Washington, D.C.?

[No response.]

Onyango Sawyer, National Coalition To Aid Prisoners and Their Families?

TESTIMONY OF ONYANGO SAWYER, PRESIDENT, NATIONAL COALITION TO AID PRISONERS AND THEIR FAMILIES

Mr. SAWYER. Mr. Chairman, first of all, before I introduce the distinguished individual with me, I say that indeed it is an honor and a pleasure to be able to come forth and protest an unjust act that was committed by the President-elect and to be sitting in the same seat as

a great freedom fighter like Julian Bond and a great woman like Charlene Mitchell and a great man like Clarence Mitchell and great people like the NAACP.

They also understand that Mr. Carter has dealt a death blow to the black community and poor people, who primarily will be affected by the decision of Mr. Carter to nominate Mr. Griffin Bell as the U.S. Attorney General.

The individual with me is Minister Abdul Yahweh Jakuwa of the Afro-American nation. He is an individual who has traveled around the country fighting injustice not only for black people but for all people.

The question we continue to talk about, civil rights, really is an injustice to black people; as black people, we are human beings.

Therefore the question is human rights and God-given rights. We feel that when Mr. Bell was in opposition to black children receiving an adequate education, it was not a question of desegregation but it was a question of denying God-given rights. These are rights that we are born with and rights that you cannot legislate.

Let me also just for a moment, Mr. Chairman, ask you to have a moment of silence for a great man whose birthday is tomorrow. I say that because probably a number of white people will not be observant of the birthday of a great man like Mr. Martin Luther King, Jr., a man who fought for the rights of all people.

With that, Mr. Chairman, could we have a moment of silence to the great Martin Luther King, Jr.?

Senator ABOUREZK [acting chairman]. Certainly.

[A moment of silence.]

Mr. SAWYER. I have a prepared statement. You probably have a copy of it. There are probably some typographical errors and some words misspelled. That was because the situation here, as other folks have talked about, was a rushed situation in terms of our trying to prepare a statement, and because we are a new organization we did not know the procedure to go through to come forth to testify. We called the Congressional Black Caucus and talked to an aide of another beautiful individual, the Honorable Parren Mitchell. He informed us of the procedure that we would have to go through in order to testify against the nomination of Judge Griffin Bell.

[The prepared statement referred to follows.]

NATIONAL COALITION TO AID PRISONERS AND THEIR FAMILIES

My name is Onyango Sawyer, elected president of the National Coalition to help prisoners and their families. We are a national organization with chapter in 15 states around the country. We are a movement dedicated to the elimination of injustice in the criminal justice system. Criminal justice system is the strongest part of government. This is one of the reasons why we object to the nomination of Griffith Bell as Attorney General of the United States. Mr. Bell on a number of occasions spoke out against the rehabilitation of prisoners, and called for stricter sentencing and punishment for criminals who happen to be black or poor, or black and poor, without understanding the social and economic impact that creates a criminal. Evidence can be shown with the rise of black people in the prison system in Georgia. Information by the southern prison project tells us that by the year of 1981 they project 12,000 new individuals to the prison system, and other information reveals that by the year of 1981 more than fifty-one percent of the population in prison will be black males between the ages of 19-28 years old. Georgia is in the vanguard to commit capital punishment genocide against black males. Mr. Bell is a part of that system in Georgia.

We are also against Mr. Bell's nomination because of his past membership in a private club that excluded other members of the human family. We do not want to be misunderstood, our opposition is not because of his membership, but because the club has done nothing to enhance human life and aids only the preservation of the southern white man and speaks of the mentality of that individual. Therefore we ask that the hearing be postponed until members of the Black Caucus and the NAACP meet with the President-elect to select an individual who reflects the position that Mr. Carter has attempted to demonstrate.

Mr. SAWYER. Let me say, as Dr. King would probably say if he were here testifying, and I am sure he would testify against the nomination of Griffin Bell because he was a man who also protested injustice. Dr. King at one time stated that "injustice anywhere is a threat to justice everywhere."

With that, I would like to say that my name is Onyango Sawyer. I am the elected president of the National Coalition to help prisoners and their families. We are a national organization with chapters in fifteen states around the country.

Let me also say because the prisoner population around the country with individuals who are on parole, probation, who are in confinement, we are over 250,000 strong, those individuals who are directly touched by the prison system. We also say that because the average individual who is in prison comes from a family of four and five, which happens to be black, poor, Chicano, Mexican-American, Puerto Rican, we touch over 1 million people around the country.

I do not represent those individuals, but I represent the concern of those individuals because I myself have been the victim of the racist criminal justice system. I myself, from a very young boy, spent 1½ years in prison. I myself understand the racism that exists within the Federal Bureau of Prisons that Mr. Bell will head if he is confirmed.

We are a movement dedicated to the elimination of injustice in the criminal justice system. The criminal justice system is one of the strongest parts of the Government that affects black people, poor people, and the so-called minorities. This is one of the reasons why we object to the nomination of Griffin Bell as Attorney General.

Information from Georgia tells us that on a number of occasions, Mr. Griffin Bell has spoken out against the rehabilitation of prisoners and called for stricter sentencing and punishment for criminals who happen to be black or poor or black and poor. He did not understand the social or economic impact that creates a criminal.

Let me also say that Mr. Bell on record said that he is for capital punishment. But he does not know what crimes capital punishment should be for. We say that capital punishment is a barbarous, racist act. The reason why is because the majority of individuals who are on death row around the country are black and poor.

Evidence can be shown, with the rise of black people in the prison system in Georgia, information by the southern prison project tells us that by the year 1981 they project 12,000 new individuals in the prison system. Other information reveals that by the year 1981 over 51 percent of the population in prisons will be black males between the ages of 19 and 28.

Let me just also say, Mr. Chairman, that the majority of those individuals who are incarcerated in Georgia are black people, poor people, and a number of them were incarcerated during the Nixon and the

Ford regime. We find that during the Nixon and the Ford regime unemployment increased tremendously in the black community. It has not decreased, but continues to increase.

We find that among black youth the unemployment rate is over 50 percent. We find that within the black community around the country that the unemployment rate is over 13 percent. We find here in Washington, D.C., in terms of prison population increasing, that each month the population in prison increased by 100 men. This is as a result of the unemployment situation here in Washington, D.C.

We say that Georgia is in the vanguard to commit genocide against black males. We say that because the individual who is a victim of the prison system in Georgia is black between the ages of 19 and 28.

We say that Mr. Bell is a part of that system in Georgia.

We are also against Mr. Bell's nomination because of his past membership in a private club that excluded other members of the human family. We do not want to be misunderstood. We think that it is also a God-given right that individuals belong to any club that they want to belong to. But we feel that that club should be enhancing the quality of life for human beings.

The clubs that Mr. Bell belonged to preserved the mentality and the racist nature of the southern white man. The clubs that Mr. Bell belonged to even excluded white women. That tells us of the mentality of Mr. Bell. We say that Mr. Bell suffers from a racist mentality. We say that that racist mentality continued to the point of where Mr. Carter made a statement that he felt as though he should be President of all the people, not President of white people, not President of black people, but President of the human family that lives within the confines of the United States.

We say that Mr. Bell, if he has withdrawn his membership in those private clubs, did not withdraw his membership until indirect or direct pressure was applied on him from the President-elect, Mr. Jimmy Carter.

Therefore, Mr. Chairman, we may be late in our request, but we are asking that the hearings be postponed until the Black Caucus, the NAACP, and other concerned groups could meet with individuals so that they could elect an individual who reflected the position that Mr. Carter has attempted to demonstrate.

Let me also say that, as a Federal judge, Mr. Bell should have been an individual who stood for justice. But we found that Mr. Bell, as a Federal judge, was not an individual who stood for justice. One way that he tried to excuse himself as not being an individual who stood for justice was when he used the example that Mr. Kennedy in 1961 also belonged to a private club.

We say that that excuse is an excuse that the committee should not accept. We say that if Mr. Bell was a member of private clubs, we know that he was a member of private clubs as a result of the evidence that has been produced, then he was in violation of the law as being a Federal judge.

A judge is an individual who is supposed to represent all the people. Judges are supposed to be individuals who are impartial. But we as a result of Mr. Bell's membership in a private club know that he was not impartial. He was, in fact, conspiring to continue to oppress black

people, women, and other minorities whose rights are to belong to any club that they would like to.

We also feel that Mr. Bell's confirmation will result in a number of black people around the country being discouraged. We feel that a number of them will show that discouragement in the next election year.

Let me also say, Mr. Chairman, that a number of black people have paraded in front of this committee today supporting Mr. Bell. Let's check them out. You mentioned Mr. McKinney. He is a politician. He is running for Mr. Andrew Young's seat, you see. I do not know if he was joking or not, but in questioning him about his support for Mr. Bell, he said that Mr. Bell may do a fundraiser for him in Georgia.

So we find that, like all black people when they see a little hope and have aspirations, they all want a piece of the pie. Those same black folks who run in front of this committee this morning want a piece of that pie. They see hope in the election of Mr. Carter.

Therefore they would support any individual who they felt could get them a piece of that pie. I say that Mr. Innis, in his attacks upon the NAACP this morning, who attacked Mr. Mitchell, who I have great admiration for because Mr. Mitchell is to me an individual who dedicated his life to fighting for freedom. That was not only for black people but for all oppressed people.

I have some problems with some of the politics of the NAACP. But I must say that the NAACP has been consistent in their fight for human rights and justice for all people. Mr. Innis does not speak for the black community. If any of you individuals who sit in this room today thinks that Mr. Innis speaks for the black community, then you are out of touch with your black constituents.

I would say that the NAACP speaks more for the black community than he does. Let's check out some of the things. I do not like to attack black folks, but when I see individuals attacking an organization like the NAACP and Mr. Mitchell, then we just have to talk about some of their history. Mr. Innis is the same man who tried to recruit black men to go to Angola to fight on the side of the South Africans against other black individuals under the pretense that it was a peace-keeping force. The black community at that time rose up against Mr. Innis.

I would say that if, over the weekend, you went back to your district or wherever you are from and sent out individuals to poll grass root individuals, welfare mothers, and those individuals who receive food stamps, those individuals who may scrub your floors, other individuals who live in ghettos, they will be in opposition to Mr. Bell.

The reason why they would be in opposition to Mr. Bell is because Mr. Bell, to me and to other individuals I have talked to, has not changed his racist attitude. He has not changed from being the Mr. Bell, the racist, to a Mr. Bell the moderate. It is politically feasible for him to come in front of a committee that will vote on him for one of the highest positions in the land.

When he says he made a mistake in denying Julian Bond his seat is something that is now politically feasible for the black folks who elected Mr. Carter. We know that Mr. Carter is indebted to my mother who worked for him, is indebted to this man's mother, and the other

poor black women who are working for him now, answering phones for his inauguration. He is indebted to us. The debt cannot be paid by giving us a Mr. Bell as Attorney General.

In conclusion, Mr. Chairman, I would like to read a letter to you from an individual who is confined in the Federal prison in Lewisburg. I do not know if you are familiar with the Federal prison system.

The Federal prison system is the most racist prison system in the whole country. Let me say why. It is because they have tried to hide their racist attack on black males in general and black men specifically who come from Washington, D.C. It is not like a State like Alabama or Mississippi that does nothing to hide their abuse and racism within the prison system.

The Federal Bureau of Prisons tries to cover up the racist acts and attacks against black men within that system.

This letter I received from a man from Washington, D.C. He starts off by saying—I won't mention his name for fear of repercussions. If his name is mentioned, I would say that by Monday it is a possibility that he would be dead.

He says:

Dear Mr. Sawyer: I take great pain in writing this letter because the subject of discussion I find demeaning to my character. It appals me even more that the possibility exists that responsible officials here are conspiring against me because of where I came from in terms of a particular section of a city.

In my mind this is a replay of what happened to cause me to be here in the first place. First of all, me and five other guys were apprehended Wednesday, January 5, 1977, and taken to administrative detention under the pretext of investigation for possible institutional violation. At this junction, none of us has been officially informed what we are being investigated for or how long we will be here.

Subsequently it seems that some reliable information has been brought to our attention to the effect that they are holding us here while they process the papers for other institutions. Moreover, it is also said that our being here was pre-planned and calculated that the officials here are out to transfer as many D.C. inmates as they possibly can; that whatever it takes to get rid of them will be done.

It seems that whatever is needed to justify our transfer it should be used. If all that I am saying comes to pass, this place needs to be investigated immediately. Whether I benefit or not, over 400 D.C. inmates incarcerated here do not stand a chance if this type of practice is allowed.

The first thing I wish that you would do is call the Bureau of Prisons and ask for a full-scale investigation of this matter, a meaningful investigation, not a whitewash one. If nothing is done, go to the Civil Rights Section of the Justice Department. Follow that up by asking for an audience with the Congressional representative of the District of Columbia. Press for an investigation by his agency and other agencies that you spoke of in the past.

Bring as much public exposure on this place as is humanly possible. Man, it is incredible all the time I have been here I have tried to mind my business like I have done for the almost six years that I have been confined. Subsequently, I get a bum beat; that's resolving in my favor now.

I am pictured, as the rumor goes, as an advantage taker, something I never was or aspired to be. This breaks the camel's back. I certainly can't stop the transfer if they truly intend to transfer me. However, I can try to be instrumental in preventing a host of others if they are arbitrarily abused.

Meanwhile, let me know when you receive this letter etc.

Mr. Chairman, I just read this letter to you. It is one letter that our organization received. We receive a number of letters each and every day from men who are confined in the Federal Bureau of Prisons. If Mr. Bell is nominated, he will head that. I say that Mr. Bell's interest

does not lie in the so-called rehabilitation of prisoners around this country. Mr. Bell made a statement when he was on the appellate court, he got tired of reviewing criminal cases.

I mean, how can a man who says that he understands racism say that? We find that in the South, during the 1960's, men arbitrarily were just locked up and given outrageous sentences for senseless crimes, for crimes that they did not even commit.

We find that in the South there are a number of men on death row now, black men, black youths, 16 years old, Johnny Ross in Louisiana. There is a black woman, Marie Hill, in North Carolina. All over the country, in the State of Mississippi, in North Carolina, Rev. Ben Chavis, the Wilmington Ten.

All in the South, black men have been victimized by this same criminal justice system. I am sure that these individual cases went through Judge Griffin Bell.

So I would say that the responsibility that you have, I hope you do better than you did with Attorney General Mitchell's confirmation. He said to lock up the criminals. We come to find that he was one of the biggest criminals in the whole country.

We hope that you would do more, when you look at Mr. Bell, than you did when you looked at Mr. Saxbe, who is an individual who eliminated hope in Washington, D.C.

I want to be brief with this, then I will conclude. Mr. Saxbe did something to a furlough program here in Washington, D.C., that in fact set back the whole prison system, a progressive movement in Washington, D.C. Why? Because evidence pointed that an individual was set up with a shotgun so that the Department of Corrections here in Washington, D.C. could be looked at as an administration that could not run their affairs; that the furlough program that they had was a program that was rampant.

We found that Mr. Saxbe cut back this program without investigating it. We found that the furlough program here in Washington, D.C. was a program that helped countless individuals to rehabilitate themselves.

I have a friend who is now in law school. I have a friend who is teaching. And there are other individuals who benefited as a result of the furlough program before the so-called Saxbe order. We found also that the furlough program here in Washington, D.C. had what they call the "resocialization program," where during the holidays individuals would be able to go out and spend the holidays with their families. All of those individuals returned. Last year there were over 200 individuals who went out. This year, only 25 went out.

We find that the average sentence in Lorton is 15 years.

In conclusion, Mr. Chairman and members of the panel, I would say that in your decision on the nomination of Mr. Griffin Bell, think hard, think hard. The word is out in the community that a number of you individuals who might vote against Mr. Bell will not vote against him because of your allegiance to the President-elect.

What about your allegiance to your constituents? What about your allegiance to those individuals who are confined in the penitentiaries in your States? Those individuals are victims of the Nixon era, when I speak about the unemployment rate within the black community.

I would like to thank you for giving us the opportunity to appear in front of you to voice our opposition to the nomination of Mr. Griffin Bell for Attorney General of the United States.

Senator ABOUREZK [acting chairman]. Thank you.

I did not have a chance to welcome you, but I do that now. Thank you for your statement.

Judge Bell sat and listened to your statement. In the event that he is confirmed, I think some of the things you had to say will make him a great deal more sensitive to what is going on with the prison system. In a lot of respects I have the same concerns that you have. I think it ought to be reformed to a great extent.

Senator Mathias?

Senator MATHIAS. I want to thank you for being here. It is not the easiest thing in the world to testify here.

Mr. SAWYER. I agree.

Senator MATHIAS. On the other hand, one of the things Judge Bell has been criticized for is that he did not stand up in a period of history. I think people who are critical and not willing to come out and lay it on the line lose a lot of the force of their argument. So I congratulate you and thank you for being here.

As far as that letter is concerned, dealing with District officials, I would suggest that you take a copy of it, while you are here in the building, up to the District Committee, which is on the sixth floor, and let us have a copy of it.

Thank you.

Senator ABOUREZK. Senator Riegle?

Senator RIEGLE. Thank you, Mr. Chairman.

I appreciate also the fact that you have taken the time to come and I appreciate the work you are involved in in terms of assisting people.

I think all the members of the committee will weigh what you have had to say.

Mr. SAWYER. Thank you.

Senator ABOUREZK. Senator Thurmond?

Senator THURMOND. I have no questions.

Senator ABOUREZK. Senator Sasser?

Senator SASSER. I have no questions.

Senator ABOUREZK. Senator Chafee?

Senator CHAFEE. Let me express my appreciation for your coming.

I personally am opposed to capital punishment.

I believe perhaps, Mr. Chairman, you can help me on this—I believe that when Judge Bell testified he said regarding capital punishment that he was for it in very, very restrictive circumstances. As I recall, he suggested, for instance, the killing of a prison guard as one reason for it. Is that your memory of it? In other words, I do not think that we put Judge Bell down as favoring capital punishment except in extremely limited circumstances, as I recall.

Mr. SAWYER. I questioned Judge Bell about that position. He stated he was for it but he did not know in what areas he was for it.

Let me give you an example of what happens in prison. We can take the example of George Jackson, a black man who was charged with a \$71 stickup, and he ended up spending 10 years in prison. Subsequently, he was killed by a prison guard in San Quentin.

We find that a number of individuals who are charged with killing prison guards are those individuals who are "actives" within the prison system. They struggle to bring about changes. Let me give you an example. The Holman brothers in the State of Alabama were black men who were in prison, but the crime they committed in prison was only to try to change the conditions in prison within the State of Alabama.

I believe it was Judge Johnson who ruled the prison system in Alabama was unconstitutional, even to the point, I think, that Governor Wallace said something derogatory about him as a result of his ruling that the prison system in Alabama was unconstitutional.

Senator CHAFEE. I did not want to reopen—

Mr. SAWYER. I was not reopening anything. I was just saying, when you use the example of the death penalty for prison guards, there are individuals now on death row in the State of Alabama supposedly for killing prison guards. But if the individual was involved in a movement in prison to try to change those conditions and to make them humanly possible to live under, then sometimes that individual is framed for a crime that he actually did not commit.

Senator CHAFEE. I see.

Mr. SAWYER. And sentenced to the death penalty.

Senator CHAFEE. Thank you.

Senator ABOUREZK. Senator Heinz?

Senator HEINZ. Thank you, Mr. Chairman.

I would like to associate myself with the comments of the people who had you come here.

I have no questions, but we all appreciate the effort you have made.

Mr. SAWYER. Thank you.

Senator ABOUREZK. I hope you keep up your work on reforming the prisons.

Mr. SAWYER. I would like also to say it has been a pleasure.

Senator ABOUREZK. Those are all the witnesses.

The Chairman, Senator Eastland, has announcements to make on procedure.

Chairman EASTLAND. I have Judge Bell's financial statement, which members of the committee can see.

I will recess now until 10 o'clock Monday morning, when Judge Bell will be back.

Those who want to testify further can file statements with the committee up until 6 o'clock Monday night.

Mr. CLARENCE MITCHELL. Mr. Chairman, may I ask a question?

Chairman EASTLAND. Yes.

Mr. CLARENCE MITCHELL. During the hearing, the question arose about whether we could get specific witnesses who were the plaintiffs in the cases that we mentioned. At the time, we did not have the money to do it.

We have since gotten the funds, and we are in the process of getting plaintiffs in the *Calhoun* case, which was a very important case in this testimony; and the *Cisneros* case, which was in Corpus Christi; and the Austin school case.

We would appreciate it very much if some time next week could be set aside so we could bring a few of those in.

Chairman EASTLAND. Discuss it with Mr. Rosenberger.

I would like to know what they were going to testify about.

MR. CLARENCE MITCHELL. They would testify about the point raised. The question was whether, by delay, they had suffered some irreparable harm. I think they would testify to that point.

Chairman EASTLAND. I still want you to discuss it with Mr. Rosenberger.

MR. CLARENCE MITCHELL. I would be delighted.

MR. BEVERLY MOORE. I just came in. I was not aware that I was going to be called this early because——

Chairman EASTLAND. Do you want to testify?

MR. BEVERLY MOORE. Yes.

Chairman EASTLAND. Please sit down.

At the conclusion of his testimony we will recess.

Senator HEINZ. Mr. Chairman, I would like to make an inquiry of the Chair, if I may.

Would it be the chairman's intention just to take testimony on Monday from Judge Bell and others and then on Tuesday proceed to some kind of final consideration?

Chairman EASTLAND. We usually meet and set a date to vote. Is that what you mean?

Senator HEINZ. Yes.

Chairman EASTLAND. We will try to set that date when most of the members of the committee will be in town. We have to talk around to see. That has been the custom here for many years. We talk around and see what is the best day.

Senator HEINZ. That sounds like an excellent custom.

Chairman EASTLAND. Old Mathias here would like to dodge that vote. [Laughter.]

Senator HEINZ. I have one further question. I gather from that that we certainly would not vote on Monday, is that right?

Chairman EASTLAND. I do not know about that. It depends upon what the committee wants to do. The committee decides that.

Senator MATHIAS. Mr. Chairman, since you used my name——

[Laughter.]

Senator MATHIAS. Have I dodged one yet?

Chairman EASTLAND. No.

Senator ABOUREZK [acting chairman]. You may proceed, Mr. Moore.

MR. BEVERLY MOORE. I will try to be brief.

TESTIMONY OF BEVERLY MOORE, CITIZENS FOR CLASS ACTION LAWSUITS

MR. MOORE. Unlike most of the witnesses who testified, my concerns are tangentially on civil rights, civil liberties, the administration of the criminal justice system; nor is it my particular concern whether Mr. Bell is an honest man, a fair man, a just man, or whether he is in his own mind committed to such causes as civil rights, antitrust enforcement, and so forth.

He can be all of those things, and I think my analysis will still be valid. My concern is with the particular philosophy through which Mr. Bell approaches his tasks as the chief law enforcement officer of the United States——

Senator ABOUREZK [acting chairman]. Let me get some order in the hearing room.

I would like to ask everybody to give the witness the courtesy that we have given other witnesses so that he can be heard. Thank you.

Mr. MOORE. Thank you, Mr. Chairman.

As I was saying, my concern is mainly with the way that Mr. Bell approaches his law enforcement functions and more particularly with how the operation of our civil legal system, including our private civil legal system, can or potentially can improve the economic well-being of the American people and in many cases the quality of their life and their health.

There are basically two ways that the law can be enforced. The first way, and the way that I prefer, is that when you find a corporation or any other type of entity perpetrating harm upon others, especially mass harms—and I want to talk about class action lawsuits here today—you have a system which insures a probability of 100 percent that that firm will be held liable for all of the damages inflicted.

If the firms know that in advance when they undertake their business activities, it is very likely that we will either avoid completely or at least minimize some of the very costly side effects of our system of economic production and consumption. This includes most diseases, accidents, pollution, monopoly, fraud, deception, discrimination, and the like.

At present, there is really no economic disincentive to engaged in those sorts of activities. In fact, the costs of production which are involved here—and they are costs of production, pollution is a cost of production, so is fraud—are, in fact, passed on to the victims who are really not in a position to avoid these costs or to minimize these costs anywhere to the extent that the perpetrators of these harms are.

We have a little experiment in our legal system called the class action lawsuit. It is only a little experiment because, at least in the Federal courts, there are only a few—I would say four—main areas in which so-called class actions for damages can be brought. There are a tremendous series of obstacles to these kinds of lawsuits. In fact, I have some particular expertise in this subject. I have read practically every class action decision ever rendered.

I have never seen, for example, in an antitrust case a situation where even 100 percent of the single damages suffered by the class were recovered in an antitrust class action, even though the law of course allows triple damages. In fact, in most such antitrust class actions, 10 cents on the dollar or 20 cents on the dollar of single damages are the norm.

Mr. Carter, during his campaign pledged, last summer at a Ralph Nader-sponsored symposium, that he would be in favor of expanding class action legislation, particularly in the consumer area. Now he has appointed an Attorney General who I presume would be the administration's chief spokesman on class action matters who, in his judicial decisions—and I only need to deal with two of them here—has proposed virtually abolishing class actions. This goes back to the pre-1966 form of so-called class action, which was only a multiparty rejoinder device.

In a second decision, he has gone so far as to say—and he has also expressed some of these views in his Pound task force report—but

in the second decision, the *Pettway* case, he has gone so far as to say that even a mild movement in the direction of the essential reforms that we need in the class action area, if the class action device is ever to be able to recover the full damages that are done to a class of people, he has said that those sorts of remedies might be unconstitutional.

Although these are only two decisions, I think that they are quite sufficient to make the point that Mr. Bell would certainly not be a proponent, and indeed might even be an opponent, of any expanded class action remedies.

Senator RIEGLE [acting chairman]. Would the witness yield?

Mr. MOORE. Yes.

Senator RIEGLE. As long as you are extemporizing your statement, are there any other findings or judgments by Judge Bell that would be in the same area that would be contrary to that, or were there only two decisions that you were able to find?

Mr. MOORE. There are other class action decisions in which he participated. One was the *Wells* case. The decision was rather restrictively to limit the scope of a class that could have been allowed on a kind of a class representative standing ground. But that does not trouble me too greatly because there are lots of other judges who render similar decisions.

I am not trying to suggest that there are not many other judges who hold the same very conservative views about how the legal system should function as did Judge Bell.

But I think the significance of this is broader than just a class action lawsuit. The attitude that Mr. Bell apparently takes toward how our legal system should function is not that it should be a deterrent device producing incentives or disincentives to good or bad conduct, internalizing social costs and all of the other terms that one can use. He views it primarily as a classification mechanism, that if you have an individual or group that is actively "aggrieved" enough—that is the code word—and wants to take the time, effort, trouble, expense to come forward and demand their day in court, sure you give it to them. At least you give them the impression that they are having their day in court. But that does not operate to cause the liability for all the harms that are being perpetrated to be internalized into the private profitmaking structure.

Senator SCOTT. Mr. Chairman.

Senator RIEGLE. Senator Scott?

Senator SCOTT. Do I understand that it is your feeling that there is a philosophy of the law that the nominee espouses with which you disagree?

Mr. MOORE. That is correct.

Senator SCOTT. Would not that be a matter to be determined to a large extent by the President-elect in determining whether he wants this man as a Cabinet officer or not, rather than a function of the Senate in advising and consenting to the nomination? Would not you say that the President is entitled to have someone of his own choosing in the matter that you are discussing?

Mr. MOORE. Of course, the President nominates all Cabinet members and is entitled to do so. But, equally, the Senate is entitled to reject or confirm all those nominees.

What puzzles me is the fact that Mr. Carter during his campaign seemed to express a contrary philosophy from that I have seen espoused by Judge Bell on the bench.

Senator SCOTT. Is it a proper function of the Senate to pass upon the philosophy of government of someone that the President wants as a member of his official family? Is it not more the function of the President to make that decision, and should the Senate substitute its judgment for the judgment of the President? I pose that question to you. You are the witness. I do not want to testify.

Mr. MOORE. I think I better understand your question now, Senator.

If you are asking whether the Senate should be concerned with policy matters as opposed to the honesty and integrity and general competence, I would think certainly so. I would think how the cabinet officer is going to administer policy should be the foremost concern.

I think it is kind of unfortunate that Watergate, with all of its beneficial side effects in terms of the cleansing effect that it may have had, has convinced many of us to ignore policy. We do not seem to care anymore about what the person is going to do. In John Mitchell's terms, "Watch what we do and not what we say."

As long as a person is honest and has integrity and is fair and pretty generally intellectually competent, that is all they seem to care about.

But what counts is results. If we have someone enforcing the law who takes a position or has a philosophy toward law enforcement which is basically a consent decree-type of rationale that does not deter wrongdoing, then this simply increases the burdens on our courts. People are going to violate the law more and more because they know there are no real sanctions against doing so, then that is what we ought to be looking at.

Senator SCOTT. The point I was attempting to make is that people have elected Governor Carter as the Chief Executive of the country. The Attorney General is one Department head through which the President exercises his will as the Chief Executive of the country. It has been the custom, I believe, to let the President select his Cabinet unless the Senate finds that a particular person for some reason, in its judgment, is unfit to hold that office.

I gather, just from some of the few remarks that you have made, that you appear to be somewhat liberal—

Mr. MOORE. No; I am not a liberal. I would not accept that characterization at all, Senator.

Senator SCOTT. I apologize. It was just a very surface impression on my part. We have not met before. I happen to be a conservative in philosophy, and yet I am going to vote for the nominees of the President-elect, whose philosophies are entirely foreign to mine. I do this merely because I believe the President has a right to choose his official family unless, in my judgment, they are unfit or unqualified for the office to which he has nominated them.

Mr. Chairman. I will not infringe further on the committee's time.

Mr. MOORE. Let me get the last word in here.

The reason I am here testifying is that I want Mr. Carter to know the significance of his remarks last summer. Maybe he did not really look into this particular perspective that my written testimony contains.

When he said last summer that he wanted to challenge Ralph Nader for the title of "the top consumer advocate in the country," and when he in that same speech endorsed expanded class action remedies, I think that he was expressing a view which can only be consistent with the type of deterrent social cost internalization, enforcement philosophy that I am espousing.

I am simply here to try to bring that to his attention and to make Mr. Bell more sensitive to a viewpoint which the President-elect did express in a promise that he did make during the campaign.

Senator RIEGLE. Do you want to continue?

Mr. MOORE. I would like to make one more point.

I did look at Judge Bell's antitrust decisions. I do not know that anyone else testifying has done so. I was unable to draw any clear conclusions. I think there were only 11 or 12 of these decisions.

Almost all of them were either Robertson-Patman Act cases—that is not a very good act in the first place—or FTC enforcement proceedings. There were some fairly restrictive decisions. But, again, the Federal judiciary in general has been fairly restrictive in interpreting the antitrust laws on standing doctrines, impact on interstate commerce, and so forth.

I would like simply to state that for the record. I did not find anything particularly outrageous or particularly good in his antitrust decisions.

Senator RIEGLE [acting chairman]. The statement which you have given us I think should be made a part of the record.

Mr. MOORE. I assume it will be.

Senator RIEGLE. Yes.

(The prepared statement referred to follows.)

STATEMENT OF BEVERLY C. MOORE, JR.*, DIRECTOR, CITIZENS FOR CLASS ACTION
LAWSUITS **

With the 1966 amendments to Rule 23 of the Federal Rules of Civil Procedure, the American legal system embarked upon a novel experiment called the class action lawsuit. Though the function and potentially dramatic impact of this sophisticated concept are not widely grasped, briefly stated the class action device can potentially achieve the following objectives.

Fundamentally, class damage liabilities can deter or cost effectively minimize the harmful side effects of economic activity (most disease, accidents, and pollution), monopoly, discrimination, fraud and deception—burdens which drain our economy of hundreds of billions of dollars annually. Secondly class proceedings can compensate the victims of these harms, especially those who could not or would not, for reasons of expense or otherwise, prosecute individual lawsuits. Of lesser importance, though an aspect naturally fixated upon by the narrow perspectives of judges and corporate defense attorneys, is that the economies of scale of the class action can substantially reduce the cost of litigation, per unit of justice rendered, for the courts, for the individual members of the class, and even for the defendants (except in the sense that but for the class action defendants would escape most of their deserved liability). Having hardly begun to exhaust their efficiency potential, class actions have already cut in half the proportion of damage recoveries ordinarily extracted from plaintiffs by their attorneys in nonclass litigation.

The promise of the class action is, however, largely unrealized. Only a handful of state court systems provide adequate class remedies, and at the federal level

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the unavailability of private causes of action has limited class damage litigation primarily to violations of antitrust, securities, employment discrimination, and consumer credit statutes. Even in these areas, the federal judiciary has manufactured an array of artificial obstacles which have made it almost impossible for a class to recover 100 percent, or even a substantial fraction, of its actual damages.¹ Consumer and other public interest groups who have long championed expanded class remedies were therefore heartened when, at a Ralph Nader sponsored symposium last summer, presidential nominee Jimmy Carter appeared to endorse this objective:

One of the proposals that I favor is to let the state attorneys general be authorized to file class action suits for people within their own states. This is presently prohibited.² I also would like to see legislation passed to overthrow the Supreme Court rulings that in the past have blocked consumer class action suits. As you know, there have been two very damaging decisions made, both of which I think are not in the best interest of our people. One says that you cannot file a class action suit unless your own losses have been \$10,000 or more;³ and the other one says that, before you [proceed with] a suit that is based on a class action principle, you must notify every single person, which may be more than a million, that the suit is being filed on their behalf.⁴ So, as a general principle, I favor the concept of the class action suit, and those are three examples that come to mind immediately. I am not an expert on the subject, but as Governor of Georgia, in my own consumer protection proposals, these principles were included in my requests from the legislature.

In that speech Mr. Carter went so far as to state that, if elected, "I hope to challenge [Nader] Ralph for the title of the top consumer advocate in the country."

Given that context, it was with considerable apprehension that we received the news that Mr. Carter had appointed as Attorney General a man who not only opposes the fundamental reforms necessary if class remedies are to achieve their potential promise—but a man who also has publicly urged, in effect, that class actions be abolished as a significant damage sanction. These views Mr. Bell has espoused in two concurring opinions rendered while he was a Judge on the Fifth U.S. Circuit Court of Appeals, *Miller v. Mackey International, Inc.*⁵ and *Pettway v. American Cast Iron Pipe Co.*⁶ and, after leaving the bench, as Chairman of the Follow-Up Task Force on the ABA-sponsored so-called National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice.⁷ We view Mr. Bell's positions with alarm not because the Attorney General of the United States himself enforces class action remedies but because he would presumably be the Administration's chief spokesman on the advisability of new class action legislation which we deem essential,⁸ as well as a key advisor on the appointment of new federal Judges.⁹

The class action section of Mr. Bell's Task Force Report opens with the observation that "few procedural devices have been the subject of more widespread

¹ In 101 federal securities cases in which class action status was denied during the last ten years, only a third even reached the "merits" of whether the case was really suitable for class adjudication—i.e., the manageability and common question predominance considerations. In a remarkable half of these cases class certification was denied, even though a genuine class harm may have been perpetrated, for lack of the "right" plaintiffs or attorneys or because some other means of adjudication was deemed preferable. See S. Wechsler, ed., *New Directions in Securities Litigation* 11-66 (P.L.I. 1976).

² The Antitrust Parens Patriae Act signed into law last year authorized such suits by state attorneys general on behalf of "natural persons" in the limited area of "agreements to fix prices".

³ *Zahn v. International Paper Co.*, 414 U.S. 291 (1973), which held that, in a diversity action, every member of the class must satisfy the \$10,000 jurisdictional amount.

⁴ *Eisen v. Carlisle & Jacquelin*, 417 U.S. 136 (1974), which held that plaintiffs must initially bear the cost of individual notice of the pendency of a certified class action to all members of the class who are identifiable with reasonable effort.

⁵ 515 F. 2d 241, 243 (5th Cir. 1975).

⁶ 494 F. 2d 211, 267 (5th Cir. 1974).

⁷ American Bar Ass'n, "Report of Pound Conference Follow-Up Task Force" 30-34 (Aug. 1976). For the addresses delivered at the Conference itself, see 70 F.R.D. 83 et seq. (1976).

⁸ See, e.g., "Proposed Federal Consumer Class Action Legislation," 4 Class Action Rep. 3-28, 342-364 (1975).

⁹ Of critical importance here are appointments to fill future vacancies on the Supreme Court. The Berger court's decisions in such areas as class actions, securities, antitrust, social security, standing, and sovereign immunity make it perhaps the most pro-business, pro-status quo, anti-victim/aggrieved Supreme Court in this century. While its class action decisions, including *Eisen* and *Zahn*, have thus far had only a modestly deleterious effect, it is only a matter of time before genuinely devastating decisions will be rendered.

criticism and more sustained attack—and equally spirited defense” than the class action. In truth, however, every major “report” or “study” that has criticized class actions had been authorized primarily or exclusively by class action defense attorneys echoing the hysterical pleas of their corporate clients who long for a return to the pre-class action days when the victims of mass torts had practically no legal remedies at all.¹⁰ In contrast, every major “objective” analysis, in the sense that its primary authors were neither class action plaintiff nor defense attorneys has either endorsed or recommended expansion of current class action remedies.¹¹

Two of the central contentions of the Task Force Report—that the massive burdens of class actions threaten the continued viability of the federal court system and that the magnitude of potential class liabilities coerces defendants into “legalized blackmail” settlements regardless of the merits of the claim—have been authoritatively rejected by the recent findings of the American Bar Foundation Class Action Project. That study, which painstakingly analyzed all antitrust class and nonclass actions filed in the Northern District of Illinois during fiscal years 1966–1973, concluded that a relatively small proportion of the greater burdensomeness of class actions is attributable to the class action aspects of the case. The primary factors are that class actions “have more parties and attorneys, greater discovery, and probably a greater potential recovery.” In other words, insofar as burdensomeness is concerned, what is important is not so much whether the case is a class action but how “big” the case is, be it a class action or a nonclass action.

The study also concluded that “[t]he charge that the costs of defending class actions are so high and the potential liability so great as to force defendants to settle irrespective of the merits of plaintiff’s claim finds little support in this district.” The evidence indicates that, rather than capitulating, defendants steadfastly resist claims which they believe will either not be granted class status or will not succeed on the merits. Conversely, defendants enter into substantial class settlements only where the case against them appears strong.

In fact, a class claim has considerably less coercive effect (if such coercion ever exists) than a nonclass claim of the same magnitude. The reason is that, in a class action, the defendant is ultimately liable only to those class members who individually claim their shares of the recovery. Depending upon how many class members have moved, died, or discarded their records, the type of class member (e.g., ordinary citizen or business entity), the size of individual claim, the comprehensibility of the notice instructing class members how to file claims,¹² the effort and the expense required to do so, and the familiar apathy and procrastination that applies also to voting and filing income tax returns, anywhere from five to 98 percent of the class members may not file claims, thus forfeiting their potential recoveries to the defendant. That reality enables defendants to “blackmail” plaintiffs into settling for amounts equal to the likely number of

¹⁰ These include all of the authorities cited by the Task Force Report in support of its recommendations. American College of Trial Lawyers, “Report and Recommendations of the Special Committee on Rule 23 of the Federal Rules of Civil Procedure” (1972); Handler, “The Shift From Substantive to Procedural Innovations in Antitrust Suits—The Twenty-Third Annual Antitrust Review,” 71 Colum. L. Rev. 1, 9 (1971); Kirkham, “Complex Civil Litigation—Have Good Intentions Gone Awry?” 70 F.R.D. 199 (1976). Mr. Kirkham, a San Francisco attorney and member of Pillsbury, Madison & Sutro, a leading west coast class action defense firm, was the principal speaker on class actions at the Pound Conference and presumably a chief architect of the Task Force Report’s recommendations. As one example of the utterly irresponsible nature of his arguments, the Report cites Mr. Kirkham for the proposition that class actions are “adding billions of dollars to the cost of producing consumer goods and services.” It is unclear whether this statement refers to the substantial legal fees that class action defense attorneys extract from their corporate clients in payment for protracting litigation or whether the reference is to the magnitude of class damage recoveries, which of course serve to reduce the cost of goods and services. We note only that it would be surprising to learn that the aggregate recoveries in all types of class actions in any single year, or in some 300 identifiable securities cases in which class status has been granted during the past ten years, see Wechsler, *supra* note 1, substantially exceeded one billion dollars.

¹¹ E.g., DuVal, “The Class Action as an Antitrust Enforcement Device: The Chicago Experience,” 1976 Am. Bar Foundation Res. J. 1021–1106, 1273–1358 [hereinafter referred to as American Bar Foundation Study]; Note, “The Rule 23(b)(3) Class Action: An Empirical Study,” 62 Geo. L.J. 1123 (1974) [the Senate Commerce Committee Study]; Nat’l Conf. of Comm’rs on Uniform State Laws, “The Uniform Class Actions Act [Rule]” (1976); Nat’l Institute for Consumer Justice, “Redress of Consumer Grievances” (1973); Report and Recommendations of the American Bar Association Ad Hoc Comm. on Consumer Class Actions, 3 Class Action Rep. 36 (1974).

¹² See 4 Class Action Rep. 147–168, 228–241, 509–513 (1975).

class members who will "opt-in" to their individual recoveries rather than for amounts equal to the harm actually inflicted upon the class. This critical deficiency dramatically reduces the deterrent and compensatory impact of class actions and explains why so many class "victories" are for ten cents on the dollar.

The remedy is new legislation by which the aggregate class damages, established with reasonable accuracy through statistical projections or other techniques, is fully recoverable regardless of the extent to which the fund can be distributed to the particular victims in the precise amounts of their injuries. New legislation is necessary because this remedy is unlikely to be forthcoming from the federal judiciary. Judge Bell's concurring opinion in *Pettway* illustrates why.

In that Title VII class action, it had already been established that the defendant employer had discriminatorily denied black employees promotions. The issue was how back pay should be computed for the members of the class. Each black employee would have to individually establish that he was qualified for a promotion, but beyond that any attempt to reconstruct which individuals among those qualified would have been promoted to what jobs at what times might have amounted to little more than guesswork. To avoid this "quagmire of hypothetical judgments," the Fifth Circuit majority held that if necessary the district judge could utilize an "average damages" formula. All qualified black employees would receive pro rata shares of an aggregate back pay award computed on the basis of the number of vacancies that had been available in higher paying jobs and the relative proportions of black and whites in the relevant job categories. The employer's aggregate liability would remain the same as if it were feasible to compute individual damages with absolute precision.

In his concurring decision Judge Bell not only objected to this rather modest remedy but, to our dismay, even indicated that it might unconstitutionally deny the defendant due process of law by "taking the property of one for another without a showing of loss to the particular recipient." If Judge Bell thought that this imprecision in apportioning damages among class members, all of whom would have to demonstrate their qualifications for promotions, was unconstitutional, we dread to think how Attorney General Bell would view the "fluid recovery", by which undistributable damages are used to reduce the price of the product in suit, thus compensating those actual class members who purchase the product again but providing a windfall for new purchasers, or the type of aggregate class remedy by which undistributable damages simply escheat to the state.

Not only does Mr. Bell oppose moving even slightly in the direction of the fundamental reforms that will be necessary if the class action device is to achieve its desirable potential, both in his *Miller* decision and in the Task Force Report he urged a return to the pre-1966 class action rule. This would require that, to be included in the class, each class member would have to affirmatively "opt-in". Not after there has been a recovery creating an incentive to opt-in in the form of a damage check for those who do, but at the early point in the litigation when the court certifies the case as a class action and when the prospect of an ultimate recovery is at best remote. As the American Bar Foundation study concluded, this "opt-in" procedure would have the primary effect of reducing the defendant's liability and "the potential of the class action to bring about the recovery of a major portion of the damages resulting from the antitrust [or other law] violation." The opt-in procedure would virtually destroy the modern class action suit, and that is why Mr. Bell's proposal has been a consistent favorite among class action defense attorneys.

Finally, both the *Miller* opinion and the Task Force Report refer to the "unseemly picture of the lawyer frequently as the real party in interest, representing vast number of plaintiffs no one of whom has substantial interest in the recovery." But what is "unseemly" about a lawyer who may spend thousands of hours on a class action case earning a fee many times greater than any individual class member who, by definition, will have a relatively small claim? No one complains that corporations earn more profits on their total sales than the value which any individual consumer receives from the product. In *Miller*, where Judge Bell was so concerned with the prospect of the attorneys' gouging the unprotected class for fees, the attorneys were ultimately awarded less than \$30 per hour for their efforts—and they would have received nothing had they not won the case. In fact, attorney fee awards are as carefully considered by judges, who must make all such awards, as is any other single aspect of class action litigation. In

recent years attorney fees have on the average consumed 15-18 percent of class recoveries, and the percentage decreases with the size of the recovery. While there is certainly great waste throughout our legal system, the amounts class members pay for the services of their attorney compare very favorably with the average retail mark up in the supermarket and with attorney fees in nonclass actions.

Though class action plaintiff attorneys have traditionally been the scapegoats of class action critics, in his *Miller* attorney fee decision Judge Bell apparently had something much more fundamental in mind when he proposed the opt-in procedure. "This would enable a return to the tradition of the legal profession where clients affirmatively employ counsel." In short, Judge Bell viewed the function of the American civil legal system—not as deterrence, social cost internalization, and maximum compensation of victims—but only to pacify those "actives aggrieved" litigants willing to acquire knowledge of their legal rights and to endure the time, expense, and effort of affirmatively employing counsel and participating in a lawsuit. Such an approach, even if it were possible, would involve great waste and duplication. But as Judge Bell must have been aware, in the normal class action situation most individuals will not affirmatively employ counsel. To require them nevertheless to do so is to give the green light to the perpetrators of mass harms.¹³ Under Attorney General Bell, we fear that C. Wright Mills' Maxim will remain true: "It is better to take one dime from each of 10 million people at the point of a corporation than \$100,000 from each of 10 banks at the point of a gun. . . . It is also safer." We urge that Mr. Bell not be confirmed.

SUPPLEMENTAL STATEMENT

Judge Bell opened his *Miller* decision with the observation that the class action device had enabled the plaintiff attorneys to parlay a single client "having 100 shares of stock valued at \$587" into a class of clients who had purchased 400,000 shares. In short, Judge Bell viewed the class action device as an indirect means of "unethical" solicitation of business by lawyers. We note that the Justice Department currently has pending an antitrust suit against American Bar Association challenging the provisions in the so-called canons of ethics which prohibit lawyers from informing citizens of their legal rights by soliciting clients or by advertising the nature and availability of legal services. It is our concern—and one which transcends the class action device *per se*—that Attorney General Bell may not vigorously pursue that suit¹⁴ or suits challenging other "ethical" canons having comparably immoral impacts.¹⁵

The current controversy over the wisdom of the advertising and solicitation rules perhaps most fundamentally separates those who view the legal process as a mere pacification device for actively aggrieved individuals from those who would prefer a legal system consistently meting out optimum civil penalties (i.e., damage liabilities) to direct private economic activity into the most societal beneficial channels.

¹³ See generally, Scott, "Two Models of the Civil Process," 27 Stan. L. Rev. 937 (1975); Moore, "The Political Economy of the Class Action Lawsuit," 3 Class Action Rep. 118 (1974); Note, "The Cost-Internalization Case for Class Actions," 21 Stan L. Rev. 383 (1969).

¹⁴ Whatever the ultimate fate of the government's suit, the Supreme Court has already agreed to rule upon the validity of the advertising and solicitation restrictions under both the antitrust laws and the first amendment. *Bates & O'Steen v. State Bar of Arizona*, prob. juris. noted, No. 76-316 (U.S. Oct. 4, 1976). Should the Supreme Court uphold these restrictions, however, the Attorney General should champion new legislation that would vindicate the policy objectives of the current government suit.

¹⁵ The most significant of these is DR 5-103(B), which prohibits an attorney from advancing the cost of litigation unless the client agrees to reimburse him if the defendant prevails. This provision severely inhibits capital formation for the prosecution of lawsuits, while the corporate perpetrators of mass harms which should give rise to such lawsuits have free access to capital markets, including steady revenue flows from the sales of goods and services, to finance both harmful economic activity and the defense of any litigation arising therefrom. See 4 Class Action Rep. 331-341 (1975). The impact of DR 5-103(B) is particularly anomalous in the class action context, where one or a few named plaintiffs must agree to reimburse the attorney for advancing the costs of prosecuting not just their own claims but the claims of all absent class members as well. This may require the class representatives to obligate themselves for liabilities many times greater than the full amounts of their personal claims. Only a foolish millionaire would seriously subject himself to such risks. The resulting imbalance in litigation resources, because it prevents many meritorious suits from being filed and forces underfinanced plaintiffs to settle others for inadequate amounts, is another reason why potential defendants so cherish the high "ethical" standards of the legal profession.

Since Mr. Bell wants to require all class members to opt-in to the lawsuit, a fortiori he would oppose any initial attorney solicitation of clients as named plaintiffs in a class actions. The latter restriction alone has been sufficient to disable the class action as an effective deterrent sanction. In as many as one quarter of the cases filed as class actions in which class status is denied, the reason is not that the merits of the controversy are unsuitable for class adjudication. It is that the attorney has filed suit with the "wrong plaintiffs" as class representatives.¹⁶ Because the plaintiffs for various reasons would not adequately represent the absent class members, the entire class is thrown out of court for its own "protection", and the plaintiff attorney is barred from soliciting another client who would be an adequate class representative.

It is obvious why the powerful interests in our society that are most likely to be defendants in such lawsuits have nothing but praise for the so-called canons of ethics. For these restrictions mean that such interests will be less frequently subjected to meritorious lawsuits. Yet if civil litigation is optimally to achieve its deterrent purposes, there must be a 100 percent probability that a corporation or other entity which illegally perpetrates harm will be held fully accountable in damages¹⁷—with or without the "right plaintiffs".

While urging what amounts to the abolition of modern class remedies, Mr. Bell's Task Force Report strongly endorses small claims courts and other informal methods for adjudicating individual grievances. Practically everyone, regardless of ideological stripe, is for small claims courts. But Mr. Bell apparently views small claims courts as a device for sweeping the need for class remedies under the rug. In short, any individual who is able to detect a legally cognizable injury and becomes sufficiently angry and determined may have his day in small claims court. If that is to be the primary remedy, small claims courts would soon become more congested than federal courts presently are, since the aggregate magnitude of nonclass damage liabilities surely will not deter the perpetrators of mass harms.

Prevention of harm is the best cure. If our private civil legal system cannot or will not achieve the objective—if lawyers, defense and plaintiff, are the primary beneficiaries precisely because the outcomes of litigation do not currently deter wrongdoing—then we should seriously consider whether that legal system is worth keeping. At least we hope that Judge Bell's views about the private legal system will not be reflected in a consent decree approach to public enforcement.

Senator RIEGLE [acting chairman]. I gather what you have just said concludes your remarks.

Mr. MOORE. Yes.

Senator RIEGLE. I appreciate the effort you have made to come. I will read your testimony carefully.

I think the colloquy between you and the gentleman from Virginia, to my left, is very interesting about the issue of whether or not the philosophy or attitude in a particular major area of the law is relevant for us to consider and perhaps to base a judgment on in weighing prospective Cabinet officers.

It becomes even more complicated when you think of it in terms of whether or not the specific campaign pledge was in effect made. In other words, are we to take into account the question of whether or not we are testing a President-elect against a campaign pledge in terms of the attitude of a nominee that he is putting forward?

¹⁶ See Wechsler, *supra* note 1, at 58-62. Cf. also *Wells v. Ramsey, Scarlett & Co., Inc.*, 506 F. 2d 436 (5th Cir. 1975) (Bell, J.).

¹⁷ See generally Becker, "Crime and Punishment: An Economic Approach," 76 J. Pol. Econ. 169 (1968); R. Posner, *Economic Analysis of Law* 360-362 (1973). To the extent that there is any probability that the defendant will escape proper liability in a particular case, for reasons of "wrong plaintiffs" or otherwise, the sanctions must be increased to more than 100 percent of actual damages to compensate for the enforcement deficiency. Though defense attorneys frequently argue that such deterrence should be achieved exclusively through criminal rather than civil sanctions, see Kirkham, *supra* note 10, at 207, criminal sanctions are almost always either inapplicable to the particular violation or involve arbitrary sanctions having no meaningful relation to the magnitude of the damage actually inflicted upon the class.

I think Mr. Scott's point is well taken, when he says that, in effect, no matter who the Attorney General might be, he works for the President. So in the end, presumably, whatever is the official policy, intent, and direction of the President, is probably really the more significant factor in terms of what is likely to take place in that area of law.

I suppose, in that respect, campaign promises are sometimes kept and sometimes are not. I suppose it will be a matter of watching to see whether or not things are done that are in line with what was promised earlier.

Mr. MOORE. In this respect we are talking about a very complicated and sophisticated type of subject. This tends to be the kind of subject that the President himself does not devote a great deal of personal attention to. That is inevitable. There are subjects like that. They are important subjects.

The President cannot personally command and direct every single element of the bureaucracy or every single appointee.

Traditionally, the authority to speak for the administration on consumer class action legislation—and there are other kinds of class action legislation that could be devised—has been in the Assistant Attorney General for Antitrust. In the Nixon-Ford years, the Assistant Attorney General for Antitrust always opposed consumer class action legislation.

I would hope that Mr. Bell, if confirmed, would follow the policy of letting the Antitrust Division develop and advocate whatever position is to be taken on this kind of matter and adhere to the so-called Saxbe rule in the sense that when a case is filed, the Attorney General does not have to approve every antitrust case that is filed.

I understand Mr. Levi did not agree to carry on that particular specific promise, but there is no indication that he has intervened in any antitrust cases. But similarly on this legislative matter, I would hope that that sort of policy would be followed.

Senator RIEGLE. I thought your point was interesting that in all successful findings where a class of people have been found to be injured, there has never been even a one-for-one recovery case.

Mr. MOORE. At least in the antitrust field. I am aware of a small handful of securities cases where perhaps 100 percent of the damages has been recovered but probably not if you include prejudgment interest as part of the damages.

But in the antitrust cases and in most securities cases and most employment discrimination and other kinds of cases that are allowed, even if you have the most ironclad case on the merits, and even if you win a verdict on liability, the obstacles are such that only 10 or 20 cents on the dollar will be recovered. That is often considered a good recovery.

The practical effect of Mr. Bell's decision would reduce that 10 or 20 cents on the dollar to maybe 1 or 2 cents on the dollar, if there is to be any recovery at all. I attempt to explain why in my statement.

Senator RIEGLE. Yes. I appreciate what you have just said.

Senator Scott, do you have any further questions?

Senator SCOTT. No. I appreciate your coming.

Senator RIEGLE [acting chairman]. I appreciate your coming. Your statement will be made a part of the record. I will make a point to

draw it to the attention of the other members of the committee who are not here at this time.

Without objection, also to be inserted in the record are the statements of Willie Mae Reid and Jeffrey Segal as well as written material supplied by Mr. Sawyer.

[The prepared statement of the National Lawyers Guild by Jeffrey Segal is printed above at page 429.]

[The prepared statement of the Socialist Workers Party by Willie Mae Reid follows:]

STATEMENT OF WILLIE MAE REID, SOCIALIST WORKERS PARTY

Carter's appointment of Griffin Bell as the next Attorney General shows the kind of justice that is in store for Blacks, the poor, and all those who dissent in this country. Carter promised to inaugurate a new day of clean government, but his choice of Bell to head the Justice Department only means more of the same. More FBI and CIA crimes. More efforts to bring back the death penalty. More use of the Justice Department to curtail busing for desegregation. More chipping away at the civil rights won by women and minorities during the struggles of the 1960s and 1970s.

One of Bell's first tasks will be to polish up the tarnished image of the FBI. The Socialist Workers Party's lawsuit against the FBI and other government spy agencies has provided a picture of FBI agents burglarizing offices, authorizing poison pen letters, harassing innocent citizens, tampering with mail, acting as provocateurs in a legal political party, disrupting elections—and then denying everything under oath until denying or covering up was no longer possible. The FBI has a record of associating with criminals like Timothy Redfearn, who was just sentenced to up to ten years in jail for burglarizing the Denver Socialist Workers Party offices as a paid informer for the FBI.

There's no reason to think that Griffin Bell would change any of this. No reason to think he would clean up the FBI by prosecuting those who ordered and approved the black bag jobs. No reason to think he would arrest CIA agents implicated in assassination plots and other conspiracies overseas. No reason to think he would be any more diligent than his predecessors in tracking down the right-wing terrorists who have bombed and shot up the offices of the SWP and other legitimate political organizations.

The Socialist Workers Party joins the women's groups and civil rights organizations, such as the NAACP, that have expressed outrage at the Bell appointment. Are Blacks and other minorities to expect even-handed justice from someone who belonged to racist social clubs that exclude Blacks? Is Bell likely to defend equal rights for women, stand up for the right to abortion, insist that affirmative action programs be implemented to redress centuries of inequities?

We've had Watergate and several years of revelations of post-Watergate crimes. There are now a lot of people who think that two systems of justice operate in this country—one for the rich and powerful and another for the poor and dispossessed, the Blacks, Chicanos and Puerto Ricans. And punishment for the poor, the dispossessed, for Blacks, Chicanos and Puerto Ricans extends to executions. There's nothing about the appointment of Griffin Bell that would correct this fundamental inequality, and it should be rejected.

Senator RIEGLE [acting chairman]. If there are no other witnesses, the committee will stand in recess until 10 a.m. on Monday morning, January 17, 1977.

[Whereupon, at 5:10 p.m., the committee stood in recess.]

NOMINATION OF GRIFFIN B. BELL

MONDAY, JANUARY 17, 1977

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 10:05 a.m., in room 2228, Dirksen Senate Office Building, Senator James O. Eastland, chairman, presiding.

Present: Senators Eastland, Kennedy, Bayh, Burdick, Abourezk, Riegle, Sasser, Mathias, Chafee, and Heinz.

Also present: Francis C. Rosenberger, chief counsel, and J. C. Argetsinger, David Dixon, and Britt Singletary, of the committee staff.

Senator ABOUREZK [acting chairman]. The committee will come to order.

May we have order in the hearing room, please?

Some of the Senators, specifically Senator Chafee and Senator Heinz, have requested that Judge Bell return for followup questions. That is the purpose of these hearings this morning.

I would like to recognize at this time Senator Chafee.

Senator CHAFEE. Thank you very much, Mr. Chairman.

I would just like to review the bidding, if I might, Judge Bell, on some matters that have been discussed here before. But I want to follow through a bit, if I might.

As I understand, being the chief of staff for Governor Vandiver was an unpaid position; but you were not there necessarily as a volunteer. As I understand from your testimony, you were there having served previously as his personal lawyer and then were hired as a lawyer to assist him in the procedure that he had outlined and the way he proposed to go; is that correct?

TESTIMONY OF GRIFFIN B. BELL—Resumed

Judge BELL. Not exactly.

I was not hired as his lawyer. I was selected as a lawyer, but I was not paid.

The firm contributed my services as a public service. I was acting as a lawyer in every respect except that we did not charge for my services.

I had represented Governor Vandiver on one matter only in the past as a lawyer. I can only remember one.

I want to say something here that may sound somewhat unusual, but I have been struck with the fact that I am the only witness who

has testified under oath. Some member of the committee asked Senator Eastland in my presence the first day if I would be put under oath. No one else has been put under oath.

People say, "Well, he can't remember enough," and this and that.

I am under oath, and I do not know what the purpose of it was in having me under oath. I have testified in Congress several times before. I have never been put under oath. I am being very careful in what I say because I realize for some reason I am under oath and no other witness is under oath.

Chairman EASTLAND. Most nominees are put under oath.

Judge BELL. But the people testifying against—

Chairman EASTLAND. That has been the practice since 1945.

Judge BELL. I do not mind being under oath, but it seems to me that it is odd that people who testified against me for 3 and 4 hours are not under oath.

That is all I have to say about that.

Thank you.

Senator CHAFFEE. The next question I have is this. You testified that you were a moderating influence in these times. Of course, I think it is fair, as you indicate, that we have to think back to the times that we are talking about. It is, namely, 20 years ago, when the atmosphere was considerably different than it is today.

But I must say, as I review what took place at that time, for example the travel to Virginia and Mississippi and the bills that were subsequently introduced in February 1959, that I do not see much evidence of moderation. I do not really see that, in view of the Supreme Court case decisions of some 5 years earlier, the bills that were introduced and which resulted from this trip and which you or the group you associated with had some hand in, could have been much more extreme than they were. I miss the moderating influence. I may have missed something in your testimony to bear that out.

My specific question, Judge, is this: Where was the moderation? I appreciate the meetings with Warren Cochrane. That came out in his testimony. I had not realized it before. But I am thinking of the legislation which was introduced.

Judge BELL. Where was the moderation?

Senator CHAFFEE. Yes.

Judge BELL. The moderation was in the fact that we did not close the schools. We had no violence. We had no disruption of any sort in the educational process. The people of Georgia think that was a moderating influence and a moderating fact.

Unless you lived there in that time, you cannot fully appreciate that. I have somebody here now getting a newspaper that came out in Atlanta this week honoring John Sibley, telling about his role in keeping the schools open in Georgia.

I had nothing to do with writing this, but it just happened to be in the newspaper in Atlanta this week. I would like to introduce this.

[The article referred to follows.]

[From "Buckhead, Atlanta," Atlanta, Ga., Jan. 24, 1977]

LIFELONG FRIEND OF EDUCATION, HE MADE POSSIBLE PEACEFUL SCHOOL INTEGRATION IN GEORGIA

(By Michael C. Snider, Editor)

"John A. Sibley—lawyer, judge, banker, civic leader—has for 87 years been a shining light among the people of Atlanta and the State of Georgia."

Not bad for a "Country boy", eh?

Those, the above words describing John A. Sibley when he was presented the Shining Light Award in 1975, came back to us recently and we just thought we'd remember to you a man who celebrated his birthday earlier this month, 89 years from the day he was born and subsequently raised on a farm in Baldwin County.

Often referred to as "The First Citizen of Georgia," Sibley was honored primarily for his judicious leadership of what later became known as the "Sibley Commission," but generally for his "Superlative and unselfish guidance to generations of Georgians," while directing one of the South's leading banking institutions, Trust Company of Georgia, and serving on the boards of several of the most influential business, educational and public institutions.

The legislative study commission itself was formed in 1960 to determine whether the states school systems should bend to a Federal court order and desegregate Georgia schools or to abide by state law and slam shut the public school doors in the face of integration.

Sibley was 72 at the time, and a man of considerable civic and business accomplishments, when Griffin Bell, then chief of staff for Ernest Vandiver asked if he would head the School Study Commission.

In the end, the majority of the commission members inspired by the leadership and direction of its chairman, urged the legislature to keep the public schools open.

"Through his inspiring leadership and the efforts of his associates on the 'Sibley Commission', peaceful school integration came to Georgia," it was said in 1975 when Sibley was honored.

Sibley, 89 this month, though officially retired, is still active as honorary chairman of the board of the Trust Company of Georgia, and maintains an office on the seventh floor of that Five Points, landmark institution.

We talked to him briefly in that office overlooking the city upon which a great deal of the "light of John A. Sibley" has shown.

Reflecting on the 1960 study, Sibley says, "it came down to a question of whether the people were going to accept school desegregation or abolish the school system and public schools. The commission brought to the surface the strength of the public school system and its value in the minds of the people"—both black and white citizens, he emphasized.

The light that Sibley has reflected over the City of Atlanta over the past half of a century perhaps has been exceeded by only one man—Robert W. Woodruff.

We asked him about Woodruff, a man for whom and by whom he has been counseled and with whom he has shared a friendship over the years.

"Amazing . . . impact in so many ways. You take the extent of his business success, the amount of wealth that he has created, not only for himself, but for so many people, that extends from the city of Atlanta to all the regions of the world.

". . . and, if you look at the philanthropy, the great diversity of it, the man himself with his many-sided talents, all of which finally reflected itself in some useful purpose, it's truly amazing.

"An amazing man, with an amazing career," he reflected.

Somewhat like the pot calling the kettle black, wouldn't you say?

Judge BELL. They refer to the fact of the "Sibley Commission" and call it the "legislative study commission." It "was formed in 1960"—I do not know if it was 1960 or 1961 but, anyway, this is what this paper says—"to determine whether the State's school system should bend to a Federal court order and desegregate Georgia schools or to abide by State law and slam the public school doors in the face in integration.

"In the end, the majority of the commission members inspired by the leadership and direction of its chairman"—that is Mr. Sibley—"urged the legislature to keep the public schools open.

"Through his inspiring leadership and the efforts of his associates on the 'Sibley Commission,' peaceful school integration came to Georgia."

In Georgia, that was moderating; and in the South, that was moderating. In Rhode Island, I do not know about that. But you can look at it now after all these years and you may say: Well, it didn't look like much to me. But we thought it was.

Any person who was fighting to keep the schools open would know that I had a major role in doing that. I am satisfied to be judged, as I said before, by the people that lived in that time and in that area. They think I was a moderating influence.

The people who came here from Georgia to testify said the same thing. There were many more who want to come. I do not want to extend the hearings. I do not think there is any public interest to go on into a contest which is not even a swearing contest over what happened at that time.

But, if you Senators think it ought to be extended, then that is your prerogative.

Senator CHAFFEE. No, sir, I am not asking for an extension.

Judge BELL. By the way, I checked with the Justice Department. Attorney General Levi wants to leave. Deputy Attorney General Tyler wants to leave. By the orderly succession, somebody has to run the Justice Department while this is going on. It appears that Solicitor General Borke would be the acting Attorney General.

We are down to the third person, now. So I do not want to rush the Senate in any way, but I am worried about somebody running the Justice Department. I have been over there, and that is the way it looks now.

Senator ABOUREZK [acting chairman]. Did you want to insert that article in the record?

It will be admitted at this point.

Judge BELL. My staff has left off the name of the newspaper, but we will put it in.

Senator CHAFFEE. Proceeding a little further, Judge Bell—

Judge BELL. I have one other thing on the moderating question. Somebody sent me this from the Miami Herald Sunday paper of January 9, 1977. It is a two-page article entitled, "The Law, Justice and Griffin Bell."

Somebody went to the trouble there of putting my opinions on a computer. I think it would be very interesting to you if you doubt I am a moderate person. I think it would be helpful if you would read this article and see what a person who I have never heard of has had to say after he made a study through the University of Miami Law School in the Miami Herald. I understand it is a good newspaper.

Senator CHAFFEE. I am not doubting anybody.

Judge BELL. I would like to offer that, too.

Senator ABOUREZK [acting chairman]. That will be admitted, also. [The article referred to follows.]

[From the Miami Herald, Sunday, Jan. 9, 1977]

THE LAW, JUSTICE AND GRIFFIN BELL

Serving on a court that changed the face of the South, Jimmy Carter's choice for attorney general built a judicial record of moderation and sometimes innovation

(By Steve Strasser)

The racial barriers were falling across the South in those days, and in Fort Valley, Ga., they fell in April, 1970. Claybon J. Edwards, a black man, won a seat on the city council.

Even after his election, Edwards had to fight 15 months in court before he finally could take office in his central Georgia city of 10,000.

As in so many battles during that social revolution, Edwards' champion was the United States Court of Appeals, Fifth Circuit, in New Orleans.

Edwards remembers his "delight" on that day when the Fifth reversed two lower courts and cleared his way into public office. He also remembers the appeals judge who wrote the decision—Griffin B. Bell.

"In observing him . . . I was sure he would go by the book," Edwards said, "which is all I wanted."

Bell left the bench early in 1976 after 15 years as an appellate judge. He had helped shape 3,000 decisions, personally wrote more than 500, and streamlined court procedures for handling appeals.

During those 15 years, the Fifth changed the face of the South, upholding the civil rights and voting rights acts of Congress and the school desegregation orders of the Supreme Court despite opposition from determined segregationists.

Now that he has been nominated by President-elect Jimmy Carter to become attorney general, the nation's top law enforcer, Bell's personal commitment to civil rights has been questioned.

A look at his record, and interviews with those who appeared in his court, reveal the portrait of a respected, moderate and sometimes innovative judge who can claim a share of the court's civil rights accomplishments in a set of decisions that changed the ways of places like Lexington, Miss.; Uvalde, Tex.; Alachua County, Fla., and Fort Valley, Ga.

Bell was not a civil rights leader in the tradition of the Fifth's liberal statesmen—Elbert Parr Tuttle, John R. Brown and John Minor Wisdom. But he was, according to one student of the court, a master mediator.

"When you have 15 judges on a court, it's very hard to be idealistically pure," said Frank T. Read, dean of the University of Tulsa law school. "The man in the middle has to muster enough votes to get a majority on a court that size, and Bell was the man in the middle."

If Bell was not a civil rights leader, he was in the main a strong civil rights enforcer across the Deep South states served by the Fifth (Texas, Louisiana, Mississippi, Alabama, Georgia and Florida).

"When the Supreme Court said desegregate, he went out and said, 'Okay, man, let's desegregate,'" said a Texas civil rights lawyer.

Another civil rights activist recalled a meeting of 30 Mississippi superintendents called by Bell. "He read the riot act to them—He told them they were desegregating next month whether they liked it or not."

In 1965, a panel led by Bell ordered a State takeover of the 800-student Taliaferro County, Ga., school system. The local school board had closed the white school and bused the white students to other districts rather than enroll 87 black students who had requested transfers from the black school. By the next school year, the chastened local officials agreed to desegregate and were given back control of their schools.

In 1970, Charles Bassett, then chairman of the Duval County, Fla., school board, remembers that he expected a good old boy from Americus, Ga., when he appeared before Bell concerning Duval's stalled desegregation plan. Instead, Bassett said, he found a stern enforcer who "emphasized we could be held in contempt of court unless we arrived at some kind of agreement."

"I'll be perfectly honest with you," Bassett said. "When I went into the court and heard his Georgia accent, I thought there was a favorable opportunity for our side. But he came on so strong that we learned very quickly that he was going to be firm and fair."

Finally, if Bell was not a civil rights leader on the court, his record shows that neither was he a follower. He did not hesitate to uphold civil rights by reversing the decisions of lower courts.

In the 1970 case involving Claybon Edwards' election to the Fort Valley city council, the city had purged 192 voters from the registration list for not paying city taxes. Precisely 150 of them were black.

The purge was challenged in the courts and, pending a final decision, the 192 were given the right to vote—on a separate voting machine. Only 34 of them actually voted, 31 for Edwards.

A lower federal court ruled that Edwards' discrimination suit could be decided in state courts, but Bell wrote that "the imperative of the right to vote" was at stake, and ordered federal proceedings. Votes of the purged voters ultimately were ordered counted, and Edwards received a seat on the council by a five vote margin.

In another 1970 case, a lower court ruled that the Mobile County, Ala., jury roll was adequate even though disproportionately few blacks were included on it. The Fifth reversed, with Bell writing that the statistics indicated "a prima facie case of discrimination based on race."

In 1974, a black employee sued the Houston Veterans Administration Hospital claiming that blacks were entering the hospital's engineering department at a lower pay grade than whites. The lower court said the U.S. government was immune from suit, but again the Fifth reversed. "Sovereign immunity is not a talismanic defense that bars all forms of relief in a . . . suit against officials and an agency of the federal government," Bell wrote.

In 1975, a Jacksonville automotive parts center hired several men who had applied later than a woman. The woman sued, claiming sex discrimination. A lower court threw out the case, but the Fifth revived it. ". . . The evidence demonstrated no tangible reason for hiring the men before appellant," Bell wrote.

One of Bell's former colleagues on the moderate side of the court called him a "fearless fellow" in upholding the constitution. But Bell's record shows a fearlessness tempered by reserve. The part of his record that most clearly shows his moderate side is his stand on school desegregation.

"If it were not for his school desegregation cases, I would put him in the liberal wing of the court," said one civil rights lawyer who has argued a number of cases in Bell's court.

The Fifth's jurisdiction was the main battleground for desegregation cases from 1954, when the Supreme Court ruled that legally segregated schools were unconstitutional, until the 1970s, when schools in the six southern states had become the most desegregated in the nation under the court's leadership.

Bell participated fully in the court's massive desegregation orders of the late 1960s—"one of the most remarkable achievements in history," he told one interviewer. But Bell generally proposed and advocated moderate desegregation plans, speaking for the philosophical middle of the court.

He passed on the Supreme Court's orders for fuller and faster desegregation, but he opposed busing except as a last resort and favored neighborhood schools.

In a 1970 opinion, Bell ordered a moderate approach in the Mobile school desegregation case, an attempt to "go further toward eliminating all Negro or virtually all Negro student body schools while at the same time maintaining the neighborhood school concept. . . ."

The Supreme Court impatiently rejected Bell's plan, advising that "inadequate consideration was given to the possible use of bus transportation and split zoning.

In his Orange County, Fla., decision, Bell permitted retention of several all-black schools in order to preserve neighborhood school boundaries.

"It was horrible, really," said one attorney who argued for desegregation. "We never really got out of that damned neighborhood thing he put us in."

The 1971 decision written by Bell in the Jacksonville desegregation case angered civil rights advocates because it allowed the closing of five black schools as substandard facilities.

Some Georgia desegregation advocates feel Bell frustrated attempts to desegregate metropolitan Atlanta by encouraging a separate desegregation plan for the predominantly black inner city rather than considering busing between the city and the predominantly white suburbs.

"I think basically he is insensitive to the educational needs of black students," said Atlanta attorney Margie Pitts Hames.

Bell usually required a school district to establish strict neighborhood attendance zones around each school so that white and black students in each zone attended together.¹

In some cases, Bell paired or grouped nearby schools and their attendance zones so that students from predominantly white and predominantly black schools would be mixed.

But he did not require extensive, long-distance busing in order to mix races. Where black or white students were totally isolated from each other within a district, all-black and all-white schools remained, with the provision that students at those schools could transfer to schools where their race was in the minority.

A 1972 case shows how Bell positioned himself on the court. Bell joined the court's liberals in requiring the desegregation of Mexican-American students in Corpus Christi, Tex. It was a progressive stand to take, because the court expanded the definition of discrimination to cover not only students segregated by law—the basis for previous desegregation orders—but also students segregated through a school system's "actions and policies."

But Bell's conservative remedies for the Corpus Christi situation angered the court's liberals, who joined in a dissenting opinion: "It is . . . absurd to believe that the use of strict neighborhood assignment or the pairing of close schools to expand the neighborhood or community school concept will significantly alleviate the existing segregation."

Later in 1972, the liberals gathered a majority behind a sweeping desegregation plan for Austin, Tex., that included use of crosstown busing. In a concurring opinion, Bell offered his more conservative remedies and the thought that some schools were segregated neither by unconstitutional laws nor by official action, but by "neutral, non-discriminatory forces" such as housing patterns.

Early in December, the Supreme Court struck down the Fifth's Austin decision as too sweeping, and in a conservative argument that sounded much like Bell's, Justice Lewis Powell wrote that racial imbalance in public schools is largely caused by residential patterns that are "typically beyond the control of school authorities."

Bell wrote few dissenting opinions during his 15 years on the Fifth—only 36, according to a computer search by the University of Miami law library. But when Bell did disagree in print with a majority of the court, he usually disagreed with the liberals.

When the court, in a landmark 1966 decision, stepped up the pressure to desegregate schools "after 12 years of snail's pace progress," and adopted rigid government desegregation guidelines, Bell dissented, calling for more freedom of choice. He said the new guidelines "cast a long shadow over personal liberty. . . . They do little for the cause of education."

That school desegregation dissent was one of the few written by Bell that showed basic philosophical differences with the majority. The typical Bell dissent was an even-handed argument for more thorough proceedings in a lower court.

On a bench famous for upholding the rights of minorities and individuals, Bell, while not disagreeing with his colleagues, often seemed to be the voice protesting that big shots have rights, too.

In a 1967 case, a black man beaten by white passengers on a bus in Georgia sued the bus company and driver for allowing the beating to occur. The Fifth ordered a verdict in favor of the black man, but Bell dissented, arguing that the bus company had been deprived of its Seventh Amendment right to a jury trial. "No court is empowered to suspend the operation of the Seventh Amendment even when there are overtones of civil rights," he wrote.

One of Bell's more vigorous dissents was on behalf of William Calley, the army officer convicted of murdering civilians in Vietnam. The Fifth upheld Calley's court-martial conviction, but Bell argued that Calley should have been given a new trial because congressional testimony given by prosecution witnesses had been withheld from Calley's defense.

Bell argued that Congress should have been required to turn over the testimony in the interest of a fair trial, just as President Nixon had been required to turn over his tapes to the courts. "One underlying principle of American jurisprudence is that no man or institution is above the law," Bell wrote. "Congress is not exempt from this principle."

Bell was capable of coming down on both sides of a similar issue, depending on how well he thought the lower court under review had done its work.

In a 1973 First Amendment case, University of Mississippi English students sued to stop administrators from interfering with publication of their literary magazine. The court ruled in favor of the students, citing their First Amendment right to publish. Bell dissented: ". . . Only the student side of the case has been considered. Each side asserts constitutional rights and those rights should have been balanced. At the very least the district court and this court should have ruled on whether the university had a right not to sponsor."

But in a 1969 free speech case, Auburn University students took their university president to court after he tried to prevent a speech by liberal Yale Chaplain William Sloan Coffin. This time, Bell ruled for the students: ". . . The right of the faculty and the students to hear a speaker, selected as was the speaker here, cannot be left to the discretion of the university president on a pick and choose basis."

One of Bell's most criticized decisions also involved a free speech case. In 1966, Bell wrote the decision upholding the Georgia Legislature's refusal to seat Julian Bond because Bond had openly opposed the Vietnam War and endorsed draft card burning.

Bell ruled in effect that Bond had fewer free speech rights than his constituents, because as a legislator his statements "could reasonably be said to be inconsistent with and repugnant to the oath which he was required to take."

A unanimous Supreme Court reversed Bell's decision and ruled that Bond's First Amendment rights had been violated.

Bond is less than lukewarm in his support for Bell today. "I don't think Judge Bell is an evil man," Bond said, "but he's simply not the best man available. He's not even the best federal judge available."

Concerning Bell's civil rights record, Bond said, "I don't think you can find anything too damaging in it, but I don't think you can find anything too inspiring, either Why not the best? I say."

Charles Morgan, one of Bond's lawyers in the famous case and head of the American Civil Liberties Union's southern office from 1964 to 1972, now supports Bell's nomination for attorney general.

On civil rights cases, "Bell would not have gone as far as the (liberals)," Morgan, now a Washington attorney, said, "but he's a damned sight better than many, many others on the court."

Much criticism of Bell is based not on his overall record, Morgan suggested, but on his background. "He's a neighbor of Jimmy Carter and he went to Mercer (University in Macon, Ga.), not to Harvard . . . I really believe that as a white southerner my liberal friends apply different standards to Griffin Bell."

Senator CHAFFEE. I am trying to get the best information I can to arrive at a decision.

In the testimony of Warren Cochrane, which I think was interesting, that is about your meetings with him, as best I understood his point of view, you were meeting with him to keep him posted and to forestall any radical action, if you might, on the part of his group while time went by and a solution looked for. It would be a solution which would keep the schools open and would give people a chance to settle down. Is that fair enough?

Judge BELL. That is not the way I remember it.

The way I remember it is this. Someone asked me to meet with a group of black leaders. Mr. Cochrane was one.

I did not seek a meeting with them. These were the first biracial meetings that had ever been held in Georgia.

I did meet with them. I met with them in our law office in the conference room. I met several times. I do not remember how many times.

Mr. Cochrane was right about everything he said, I think. But I remember some extra things. One was that there were, I think, three

school cases already in progress. One was *Calhoun v. Lattimer*. One was Mr. Ward, who wanted to go to the University of Georgia Law School; that case had been going on. I referred to it earlier. He graduated from Northwestern University Law School while the case was in progress in Atlanta. It was finally dismissed as being moot. That was going on.

There was another case going on in the middle district of Georgia in the Federal court. It was brought on behalf of Charlene Hunter and a male student to get into the University of Georgia. There were three cases going on.

The purpose of these meetings, as I recall the purposes, was that the black leaders said that they wanted to get the schools desegregated. They wanted a victory. They did not want to have to go through the courts. They were taxpayers. They were leading citizens.

I shall never forget Dr. Yates. They call him "doctor" because he was a pharmacist. He owned two or three drugstores and was a leading citizen of Atlanta. He also owned a major share of a bank.

Dr. Yates said: Let's integrate Georgia Tech now. Georgia Tech is a State owned college right in the middle of Atlanta. He said:

My son goes to the University of Pennsylvania. He cannot go to Georgia Tech or the University of Georgia, so I have to send him to the University of Pennsylvania.

He said:

I pay a lot of taxes in Georgia. I want you to explain to me how that is fair. When I ride by the campus of Georgia Tech, I see many students there from foreign lands whose skin is darker than mine. Explain that to me.

I said:

I can't explain it. I think it is unfair myself; but we are going to do something about it. All of this has just happened suddenly since *Cooper v. Aarons*, and all these promises that people have made have got to be changed. We are going to get something done about it.

We were meeting because they wanted to bring the whole thing to an end. That is the way I remember it. I know I remember right about Dr. Yates. It has been a long time ago, but I was glad to meet with them.

Mr. Cochrane said that he did not know if Governor Vandiver knew about these things or not. I am sure he knew that we were holding these meetings. They said they did not want to meet with him. Well, he did not want to meet with them, as I remember it. It was an impasse. I was doing the meeting.

I was from Atlanta, and Atlanta was a moderate place in Georgia at that time to the extent there was any moderation. So what he said is essentially right, but I am adding some things to it.

Senator CHAFFEE. The other point that was brought up was this. I would like some clarification on it. At a subsequent period—and we are now up to 1961 or so—there was a suggestion from one of the witnesses, and I cannot remember which one, that you had called together the parties in the Atlanta school dispute and asked them to meet without attorneys. I did not quite understand that. Were you then in your capacity as a citizen or your capacity as a judge of the fifth circuit?

Judge BELL. This happened not in 1961 but in 1972 or 1973. I had made several speeches on school desegregation. School desegregation at that time had ended in the fifth circuit. The problem was over. We had integrated every school in the State of Mississippi; every school in Georgia was integrated, except Atlanta was still going along with the race population changing in the school system.

I had charge of the Jacksonville, Fla., school case; the Mobile, Ala., school case; the Tampa Fla., school case; Albany Ga.; Columbus, Ga. I do not know how many more.

The reason I met with the school board and the lawyers in open court in Atlanta was to try to get the school board to comply with Judge Lawrence's order to desegregate the school there. Chief Judge Brown asked me to take the case over because Judge Lawrence said he could not give them a fair trial. They had hanged him in effigy and a few things like that.

So I said: Well, I will meet with them and see if I can get them to comply with the court order. So we met. There were 200 or 300 people in the courtroom. I gave them a speech on school desegregation. It was not unusual for any judge on the fifth circuit to make speeches on public matters of this sort in the public interest. There were new changes in the rules and whatnot.

They had this action forum in Atlanta. I did not know such a thing existed. I was asked to address them on the state of school desegregation in the South.

It was half black and half white leaders. There were the presidents of the largest companies who were members of it. The president of the chamber of commerce was there. Lonnie King was president of the NAACP at that time. I think the local president of the Urban League was there. I know that is important because I am going to tie it in a second.

The president of the Urban League was chairman of the school biracial committee. His name is Lyndon Wade.

The Atlanta case was in the District Court.

The way we operated the fifth circuit was this. It was not my case. The school cases in the fifth circuit were divided amongst panels of three. I had nothing to do with the Atlanta case. I had not had anything to do with it since back in, say, 1963—maybe 9 or 10 years earlier.

Three other judges were handling the case. I went and gave them a talk on the state of school desegregation. I told them that what they were doing in Atlanta was a disgrace, that they ought to finish the case. It was going on 15 years. I told them that oftentimes cases became so complex at the hands of lawyers that they had no end to them and that if necessary the parties ought to meet and talk about what they wanted to do with the Atlanta school system.

I told them that Mr. Melvin Levanthal, a lawyer in Jackson, Miss., who worked for the NAACP Legal Defense Fund, and whom I had known in handling cases in Mississippi at one time, was an expert in the field. They might call him in as a counsel. He knows this. I later told him right after that.

They could call him in as a counselor on how to terminate the litigation. This was in response to questions that were asked. I had given this 30- or 40-minute talk on school cases.

Two people were there then; there was one black and one white. Mr. King said who they were. I do not remember who they were. They said that Mr. King and a member of the school board, a white member who was there at the meeting and I presume a member of the action forum, said: Why don't you all get together and talk about the case? They said: We will.

At that time, a new speaker came on. They had three speakers that day. The new speaker was some government agent from HUD. I remember what he talked about. I left shortly thereafter because I had to leave.

He told them that they ought to have more low-cost housing in Atlanta. Building low-cost housing was tantamount to getting a new industry in the city. You could draw a lot of new people. Well, that threw the whole meeting into consternation at that point. I thought it was probably a good time for me to leave, and I did.

I never met with these people. I do not know if they had lawyers or not. Mr. King said he never met without lawyers.

I do not know what they did. The next thing I know, they had a hearing in the district court. I was in the courthouse at that time. I had an office there.

There was a lot of backing and filling. People were objecting and wanting to intervene. The ACLU I think finally got into the case. I am not certain.

It then went to the fifth circuit eventually. The fifth circuit approved the compromise plan.

You are talking about a school system—it is not a white school system; it is a black school system. They have 82 percent black students. The majority of the school board is black. The chairman of the school board, Dr. Benjamin May, who is a distinguished educator and former president of Morehouse College, has written letters to Chicago Defender and the Pittsburgh Courier defending me. He is the chairman of the school board and the superintendent after this compromise came in with a black superintendent.

You can imagine that some people had some doubt as to how to integrate a black school system. When the dispute started, it was a white school system. The whole thing changed.

But, at any rate, I made speeches before about school desegregation; and I expect I am going to make some more. I know a lot about that subject. I have integrated more school systems, as I said earlier, than any judge living. That includes the chairman's State of Mississippi.

I think Mr. Rauh said I did not do a good job. Maybe on those I could talk to you about. I would be glad to tell you about the *Cisneros* case or the *Austin* case. I do not want to tell you everything I know, but—

[Laughter.]

Senator CHAFEE. Say something about the *Cisneros* case. That has been a target here for a good deal of discussion.

Judge BELL. All right.

The *Cisneros* case and *Austin* case turned out to be companion cases en banc in the fifth circuit. The *Cisneros* case arose in the context that it was the first case in the fifth circuit that did not involve segregation required by law. It involved Mexican-Americans.

A district judge who had never been in a school case went down to Corpus Christi and tried the case. He ended up with an order placing every building in the whole district—just as if it were Rhode Island, it was a place where they never required segregation of Mexican-Americans by law; it was just like New York City, if you please—he put every building in the system on a racial balance which he called “tri-ethnic.” I recall there were less than 5 percent blacks in the district. There were a lot of Mexican-Americans and a lot of white Americans.

A lot of these people, you know, who are Mexican-Americans have Spanish surnames. He divided them on the basis of Spanish surnames.

This was a neighborhood school system. He ordered them, as I recall, 97 schoolbuses. He even provided in the order how many people could sit down and how many people could stand up in the schoolbuses. When the case came to the fifth circuit for a stay—the school board asked for a stay—we had gotten to the point in the fifth circuit where no panel could issue an order without circulating it to the entire court. We were trying to stabilize school law.

When I saw it, I was not on the panel. I said: This case ought to be stayed. I will move to put it en banc so the entire court can hear the first case where you did not have de jure segregation.

I lost. I did not get it en banc. They brought it to the Supreme Court. Justice Black stayed it. He said it was a confusing situation which involved new issues of law, and the case ought to be stayed until it could be heard on the merits. It then was heard on the merits en banc—no, I am sorry, it was panel opinion first. Then that went en banc along with the *Austin* case.

In the *Cisneros* case, the vote was 10 to 5 for the majority opinion. I had written the remedy and the majority opinion in the *Austin* case. The judge had given no relief at all in that case. We sent it back with the instructions that they desegregate under this remedy section.

In the *Cisneros* case, Judge Dyer wrote the opinion. Chief Judge Brown en banc asked me to get together with Judge Dyer and see if we could agree on the remedy and fit the remedy that we had formulated in the *Austin* case into the Corpus Christi situation, which was the *Cisneros* case.

I went to Miami and met with Judge Dyer. We agreed on the remedy. The vote then became 10 to 5 in favor of the remedy and in favor of the whole opinion which was that the Mexican-Americans had been so discriminated against that you did not have to go school by school. The whole school system had to be segregated, just like this district judge had said.

But this new remedy had to be used. It was this: First give the school board a chance to come up with a plan. If they refuse or if they come up with an inadequate plan, then the court has to do one of several things. One is to pair schools which are adjacent to each other, and then you get into the mix of students that way.

One was to redraw zone lines and to bring in other groups to integrate the schools. There were some other things.

The last thing was that if, after all that has been done, there still remains segregated schools then you must bus. If you do bus, then you have to take into consideration the distance and the time involved. And you must consider the age of the children.

I think we may have referred to children up to the third grade or something like that. It was not that they would not be bused, but they had to have some thought about how far you are taking them away from their home.

That is the remedy.

Mr. Rauh did not tell you this.

I am getting ready to tell you the rest of the facts.

The school board was incensed at what we ordered them to do, so they applied for certiorari. They hired a lawyer from a Houston law firm to apply for certiorari with the Supreme Court.

I cannot remember who was representing the plaintiffs, the NAACP Legal Defense Fund or the Mexican-American Legal Defense Fund. But whoever it was filed a cross-petition for certiorari.

This is important. The Supreme Court denied the school board's petition for certiorari, but three justices dissented. They thought that certiorari should have been granted. I think you could infer from that that three justices of the Supreme Court thought that 10 of us went too far. I think that is the only fair inference.

On the cross-petition filed by the plaintiffs, they did not get a single vote—not one vote.

In the *Austin* case, which was decided at the same time, it came out 8 to 6.

There is another thing I want to interject right here. You have got to be extremely careful about what judges say in dissenting opinions. Judges get upset with each other sometimes. You do not have to be responsible when you write a dissenting opinion. Only the person who is ordering people to do something has got to be responsible.

I have written a lot of dissenting opinions myself, so I think I understand how to write dissenting opinions.

In *Austin*, the judge had not given any relief in a similar situation. It was tri-ethnic. We reversed him and sent it back to Austin. We told him to follow the remedy.

Since I left the court, that case finally came back up to the fifth circuit. According to the newspapers, the court ordered, as I recall, 42,000 children to be bused. The school board then appealed that to the Supreme Court of the United States. Within the last 2 months, the Supreme Court has reversed the fifth circuit for ordering that.

They said the sweep of the order was remarkably wide or broad. Justice Powell wrote something which has been commented upon in newspapers several times. He said, "In approaching these types of cases, the remedy to be fashioned must not exceed the scope of the wrong found."

That is a principle of equity that people of my age know about. I do not think they teach equity anymore in law schools.

Senator CHAFFEE. They did when I was there.

Judge BELL. This is what Justice Powell wrote. He sent it back and told the district judge to fashion a new remedy with that in mind. That is on the way to being resolved.

Now I do not claim that Justice Powell followed what I said, but I wrote the same thing in the *Austin* case: that is, the scope of the remedy has to be adjusted to the wrong that is found.

I think if we ever go beyond that in this country, then we have left any reasoned system of law and we have gone into some sort of a punitive approach or at least an unreasoned approach.

That is what happened in those two cases.

I think there probably have been 25 cases decided in the Fifth Circuit since then where the court has simply said, where the district court did not do as much as should have been done, reversed and remanded by saying, "See *Cisneros v. Corpus Christi School District*; the district court is directed to follow the remedy therein set out." It became almost an order-type way to desegregate schools.

You will find plenty of school cases since then. This is the key case in the fifth circuit.

I am well satisfied with it.

I think it is undoubtedly so that some people that Mr. Rauh admires did write some bitter dissenting opinions saying that we had delayed the promise to the children and that sort of thing. But, so far as I know, we went by the law and the Supreme Court seems to think so. I do not know where else you go to decide the law. Congress can meet and change it, but right now the highest court is in accord with these things. They are very reasonable.

If we had time to really go into it and explain what happens when you try to integrate a large school system, you would see that this is a reasonable approach.

Senator CHAFEE. If I might get a copy of that Miami article, I would be interested in it.

Judge BELL. I would like for you to read it.

Senator CHAFEE. Second, I would like to refer back to what you said when you were here the first day about keeping a tight rein on the FBI and the possibility that you might even have an office over there. To me, that seems to make a lot of sense.

Although all the talk here has been about school cases, there is a lot else in that job beside that. I certainly hope, if confirmed, you will follow through on that tight rein on the FBI prospect.

Those are all the questions I have.

Senator ABOUREZK [acting chairman]. Senator Riegle?

Senator RIEGLE. It is good to have you back. I appreciated the fact that you remained here while witnesses, pro and con, testify.

It is my understanding that you resolved this issue with respect to the private clubs and are going to take an action on that. Can you tell us what that is?

Judge BELL. Well, I think tomorrow is the last day I am going to be in Atlanta for several days. I plan to resign from the clubs tomorrow. I have to write a letter resigning. I will do that tomorrow and mail the letters tomorrow, from all three of the clubs.

Senator RIEGLE. Another question which arose—and I realize that this may be a tougher question for you—

Judge BELL. Let me hasten to say that this assumes that we are going to get through today.

Senator RIEGLE. I see.

Can you tell us anything at all—some people have made reference to the notion that, when you become the highest law enforcement officer in the United States and are especially charged with seeing that there is equal justice and equity across the board with respect to

the whole legal system and the way the society works, it is important to consider your own predisposition about clubs of this sort after serving a term as Attorney General.

Judge BELL. I testified the other day about this. I have not made any decisions about that. I do not know how long I will be Attorney General. I do not know if I am going to be Attorney General.

In the meanwhile, these clubs may not discriminate anymore. Changes are going on, you know. I just do not want to say for sure what I would do when I am a private citizen.

Senator RIEGLE. I appreciate the fact that you have made the decision to take this action tomorrow. I think it is an appropriate one. I applaud you for doing so.

I guess the question that is left in my mind by the strength of the same reasoning that you yourself have applied and has caused you to decide that it is appropriate to resign, which is a voluntary act on your part, is that there is something about it that you would not be able to feel comfortable about it. Therefore you have elected to take this step because somehow you do not think that membership in clubs of that sort is compatible in some fashion with serving as Attorney General of the country?

Judge BELL. May I speak to that?

Senator RIEGLE. Certainly.

Judge BELL. You cannot imagine how many letters I have gotten from people objecting to my resigning from the clubs.

What the NAACP's position is in these hearings is very mild compared to letters coming from all over the country saying that I should not resign from the clubs and that it is a constitutional right in the freedom of association, and all that sort of thing.

I would like to say why I resigned.

I think that people do not trust the Government. I do not think they trust any part of the Government right now. I think that, to restore the trust and faith of the people of the country, certainly the first place would be the office of the Attorney General.

If the people do trust the Attorney General, I think we are on the right road. I plan to meet with all groups. I plan to have regular meetings. I plan to have somebody on my staff in charge of calling people to come and meet.

I do not think that I would be able to be trusted as much if I were a member of clubs which have discriminatory policies or practices—not policies, maybe, but practices.

Therefore, I want to be in a position where people trust me. That is why I came to the conclusion that I did. I think it is important. I am satisfied with my decision. I tell people that. Some call me on the telephone about it. I am getting a lot of letters about it.

I think it has been widely misunderstood. There is nobody's right being taken away from them. I will be holding a very high office. One contribution I would like to make would be to restore trust of the people in the Government in my own little way.

Senator RIEGLE. I appreciate your statement. These letters that you have gotten, I am sure, will be the first of many on a number of topics. I am sure you got many as a judge from time to time.

I can say to you, as one who has served here for awhile, we get a lot of that kind of mail. It tends to come pro and con. As you well know

and as your own life attests to, the judgment you end up making may or may not conform to whatever the mail volume is that is coming.

I applaud the decision you have made. I appreciate the statement you have just made. But I want to pursue just one part of it with you.

The attitude you suggest of openness and of wanting to affirmatively invite groups to come and meet with you and to have that kind of an open door policy at the Justice Department, and to have both the practice and the appearance of equity and equal access, I think, is crucial.

One of the questions that has arisen is this. With respect to these clubs, apart from the decision that you have reached to resign effective tomorrow, is the idea that it is just a question of sort of putting these in a trust, in effect, for the term of service with the intention that you are going to go back into those clubs afterwards—and I am not here to make a brief against those institutions, and I do not want to leave that inference.

If the feeling is left that this is a temporary action and is something that you are going to do for a period of time and as soon as that is over that your impulse which is buried underneath that is to go back and be a part of the same kind of club arrangement where, by your own admission, there is a discriminatory feature, then I am concerned that may undercut your own ability to lead during your term as Attorney General.

I want you, if confirmed, to be a strong Attorney General that does not have his capacity to lead eroded in any fashion.

I am wondering if that aspect concerns you at all.

Judge BELL. It does not concern me. If I leave the Attorney General's office, or if I am not confirmed, I will decide then what I want to do about that. My life has not been one of discriminating against people.

I said the other day that there were a lot of things I was in that were segregated and I integrated them. These clubs might be. I do not know what I will do about that.

I heard somebody say that I was putting my conscience in trust or something like that. I am resigning from these clubs. I have been in these clubs a long time. I am flat resigning. There is no if, and, or but about it.

But I will not say what I am going to do when I get out and become a private citizen again. We do not have any sort of system in this country where one gives up rights for life like you sent them to a penitentiary or something like a felon, and from then on you are on some kind of restriction.

Senator Heinz exacted a promise out of me last week that I will not have anything to do with the next two presidential elections even if I were not in office. I agreed to that. I do not know that that was a fair thing to do to me, but certainly I will not have anything to do with the next one. That will make the office look better in the future.

Now you want me to say that I will not ever be a member of a private club again.

Senator RIEGLE. I did not quite put it that way.

Judge BELL. I do not want to say that.

Senator RIEGLE. I wanted to give you an opportunity—

Judge BELL. I think I have gone beyond the call of duty. I have gone beyond what most public officials in the country have ever done. Governor Carter said he resigned when he started running for President. Nobody has asked him if he is ever going to join a club again.

He resigned for the same reason I did and the same reasons Attorney General Kennedy did when it was raised on him. I am sure he was trying to build trust.

I do not know of anybody who has had to agree with what they do for the rest of their life just to hold some Government job.

Senator RIEGLE. I do not want to belabor this too much longer. I want to say one more thing about it.

I think the job that you are on the threshold of taking is probably the second most important job in the Government, after the President himself. I see it as the most important Cabinet officer. You are the highest legal officer in the land. I mean no disrespect to you, but that is not just another Government job.

Judge BELL. I know that.

Senator RIEGLE. It is a big and profound Government job.

Judge BELL. I agree with that.

Senator RIEGLE. There have not been very many people to hold it, and some ought not to have held it. That is why I think, especially at this period in time coming after the history we have had where people's faith has been shaken—and I agree with your assessment about people's faith in Government generally—it has been especially shaken with respect to the office of Attorney General.

There has probably been as much a decline in the faith in the people holding that office over the last period of time as there has any. So the importance of these steps and these gestures and their meaning, I think, takes on a much higher degree of significance. That does attach a special burden to you.

You have said that yourself. I appreciate the fact that you have accepted the job in the face of a history that attaches certain particular requirements and responsibilities to it that perhaps are different than might be in the case of another Cabinet officer.

I guess the thing that I would want to say to you is this: I think it is important that whoever holds this position be acutely sensitive on all matters of civil rights and all matters of discrimination. I think if there is the suggestion that you feel comfortable—past, present, or future—with the whole notion of practices that arbitrarily deny somebody an equal chance based on factors of race or factors of that sort, then that will leave a lot of people troubled. It would leave me troubled.

Judge BELL. I do not feel comfortable with that.

Senator RIEGLE. I do not think you do, either. That is why I do not want that suggestion left on the record because I do not think it is fair to you.

Judge BELL. I do not feel comfortable with it. Probably before any of you have thought of it, I had some trouble in my own mind with the idea of segregation because of some religious faith which I do not care to get into.

I have thought about this question longer than most people have.

Senator RIEGLE. I appreciate that; I appreciate your saying it.

I would like to move on to another area, if I may.

I would like to, also, have it a little more clear in terms of the meetings that you held with the group leaders, that is, the black leaders during the Vandiver term.

Mr. Cochrane, who was here, described those meetings to us. I want to know clearly whether or not you were there on your own initiative or whether, in fact, Governor Vandiver knew that you were there.

Let me say before you respond that I would find it hard to imagine that you would not feel some requirement to let the Governor know that you were counseling or discussing or talking with or getting feedback from a group of this sort. I assume that he did know.

Judge BELL. I am sure he did; I am sure he knew it. Mr. Cochrane said he didn't think he knew it, but I am sure he knew it. As his lawyer I couldn't go around having secret meetings with anybody. I didn't consider these to be secret meetings. These were meetings. They were biracial meetings. They were very healthy. People laid down their demands.

Senator RIEGLE. Did you initiate—was this your idea?

Judge BELL. No; I don't think it was; I have no recollection. I have tried since Friday to think of that. I have no recollection of seeking the meetings myself. Some third person must have gotten these meetings up.

Since Mr. Cochrane testified, the next morning I spoke with T. M. Alexander. He is a black leader. He has an office here in Washington and one in Atlanta. He is in the insurance business.

He came to this room and was at the meetings and offered to testify, but I did not ask him if he knew that or not.

I think somebody must have suggested that they would like to meet. As Mr. Cochrane said, they did not want to meet with Governor Vandiver. He did not want to meet with them because he had made all of these promises. I think it just fell on me to meet with them.

I did not mind meeting with them; I was a lawyer in Atlanta—they lived in Atlanta.

By the way, our law firm at that time represented all the black colleges. There are more black colleges in Atlanta than there are in any city in America. We represented all the black colleges, so it was not unusual for us to be having a meeting of this sort.

Senator RIEGLE. It is clear, then, in your own mind that you did not initiate these meetings or your participation in the meetings?

Judge BELL. It is clear to me that I did not initiate the meetings, the first meeting. We may have met after that. I am sure we did.

Senator RIEGLE. Do you think in terms of the way the process normally worked that it is safe for us to infer that you would have had to get some clearance from somebody to meet? Would you not have?

Judge BELL. I would not have had to get clearance. I was a lawyer, not a Government official.

Acting as a lawyer representing somebody, I feel certain I would have told my client that I was meeting with these people.

Senator RIEGLE. That was the Governor.

Judge BELL. Also, I know that I relayed their demands to him. They had demands that they were making.

Senator RIEGLE. In other words, basically he or somebody in a high staff capacity for him was plugged into the fact that you were having these sessions and, in fact——

Judge BELL. It would have been him. I was not dealing with any of the lower people.

Senator RIEGLE. All right.

Is it also fair to assume that he was the one who asked you to go? Somebody asked you to go to this meeting.

Judge BELL. I do not think he asked me. I think these people, whoever got the meetings up, probably thought of my meeting with them. I was the person that they would have normally wanted to meet with.

Senator RIEGLE. You were instructed to go? That's the long and short of it?

Judge BELL. I was not instructed. I am sure of that. That would have been like Vandiver himself going, if he would have instructed me.

He did not want to meet with these black leaders and they did not want to meet with him.

Senator RIEGLE. Did somebody ask you to go?

Judge BELL. Somebody got the meeting up and said: It would probably be a good idea to meet. Who did it, I do not know. It could have been one of the black leaders, for all I know. It has been so long. I met with them. I am certain I told Vandiver about it. I am certain I relayed their demands to him.

Senator RIEGLE. You said a minute ago that, No. 1, you really did not initiate the meeting. You did not ask for it.

Judge BELL. Since I am under oath, I do not want to be tried for perjury, so I will put it like this: I do not remember initiating the meeting. It would have been highly unlikely that I would have because I was a lawyer representing the Governor. Why would I be going out looking for folks to meet with? I do not remember it. I do remember the meetings. I think they were good meetings. I think the people there—they have said so in the Atlanta paper since all this came up——

Senator RIEGLE. I am not asking you to remember something you cannot remember. However, in terms of the way the process normally worked, which I think you evidenced before you have a clear recollection of, it is that someone in the Governor's office or someone representing the Governor would have, in effect, had to see to it that you were the person who was there in behalf of that office. Is that not right?

Judge BELL. That is not right.

I was a free—I was not just an employee having to get permission to do all these things. A lawyer is a lawyer. If I wanted to meet with them, I could meet with them.

I do not want to be too certain about this, but I think that a black leader by the name of Robert Parks thought of having these meetings. He may have called me and asked me to meet with his group. He has talked to me two or three times lately, but his recollection is not too good about it now. I believe that is the way it started. At any rate, we did meet. I heard the demands.

Since all of this started about 3 weeks ago, a newspaper reporter for the Atlanta Constitution by the name of Sam Hopkins has interviewed

a lot of these black leaders. There has been a good deal written in the Atlanta newspapers, if you would like to see it.

I had forgotten all about the meetings. Maybe I am getting old and my memory has gone bad, but I did not even remember the meetings until I read about them in the Atlanta Constitution. But I remembered it after that.

Senator RIEGLE. Let me just try to get one other thing straight here. That is this: As I understood your testimony about 5 minutes ago, you said because you were a lawyer for the Governor that, clearly, you would have to be counseling and checking in and making sure that things that you were doing were things that were appropriate to do and that he would want to have done.

Presumably, when you found out—you did not make the meeting happen, somebody else made the meeting happen, you found out about it, you do not quite recall how, the decision was made for you to go. You do not recall, I gather, whether you decided that you would go without any help from anybody else or whether somebody gave you a phone call or came to you and said: You ought to go to this meeting?

Judge BELL. No, I don't. I doubt that it happened like that.

I was a person who was not without some prominence as a lawyer in Atlanta. We represented a lot of blacks through these schools. I would have been a person whom the blacks would have trusted to have a meeting with.

Nobody had ever met with the group before. If I were asked to go to a meeting with them, I am sure I would have gone. I would have told the Governor that they wanted to have a meeting and I was going to meet with them. That is the best thing I can tell you about it.

Senator RIEGLE. Do you recall talking to the Governor afterward about these meetings?

Judge BELL. No; but I am sure I did. I just cannot imagine that I would not have told him.

Senator RIEGLE. So, chances are, then, that you would have come back and sort of plugged in the information——

Judge BELL. Told him what they wanted. They had their demands. They were not too different from what the white citizens of Atlanta wanted.

Senator RIEGLE. It sounded that way when Mr. Cochrane outlined it the other day.

Judge BELL. We had the county unit system and Atlanta had no political power. They were supplicants to the State political machine system at that time. I do not guess that it was exactly a machine, but it was the county unit system.

We had had Governors run for years who would always, as part of their platform, say: I don't want any votes in Atlanta.

At one time they did not want votes in any city that had streetcars. They did not need any because they had the county unit system. So if Atlanta had a problem, they would let Atlanta go under.

This has changed now because we do not have the county unit system any more. This is all part of that era.

Senator RIEGLE. What I am trying to get straight here is your sense of what happened in line with Mr. Cochrane's sense of what happened. You were here when he spoke, I think.

The flavor I got from his testimony—and I do not have it in front of me right now—but it was to the effect that he felt that you had sort of been somebody who had helped make these meetings happen. I got that tone from his testimony.

Second, he had the clear feeling that you were there probably without the knowledge of the Governor. In other words, you were sort of operating almost as a secret agent here who was, in effect, trying to move things along on your own initiative, separate and apart from all the sound and fury that was anti-integration that was coming out of the Governor's office. What you are, in effect, saying is his impression really is not a correct one and that your own is quite different.

Judge BELL. I think I told Senator Chafee that. I do not exactly agree with that part of it. I heard him testify. That was his impression of it.

He did say that I kept telling them the Governor would change his mind. I do not know how I would be saying that if I did not tell the Governor. He certainly would not change his mind without having a lot of facts before him. This would have been one fact. I think Mr. Cochrane is probably incorrect about that. My best judgment is that I was telling the Governor that we were having these meetings and that these were their demands.

Senator RIEGLE. Did the Governor ever get mad at you? Did you ever push him to the point where he got angry enough to say: Quit leaning on me?

Judge BELL. No, he didn't. He got mad at other people finally because I think he came to the conclusion I was giving him good advice. He had more than one adviser. He finally came to where he, I think, thought I was a good adviser. He finally did what I recommended.

He does not get mad. He is not a person who gets mad. He listens to a lot of different people.

He finally came to my own view of the law. I think he had the same view of the law I did after he read *Cooper v. Arons*.

He was in politics. He had made all these promises. The mood of the State was—and all the State legislators had run on this platform—to close the schools. It was not very easy to work out of this. But we worked out of it. It was a good time when we worked out of it.

Senator RIEGLE. I appreciate your responses to my questions today. I did the other day as well.

As I say, I appreciated also the fact that you remained in the room to listen to those who were for you and those who were not.

Judge BELL. Thank you.

Senator RIEGLE. That is all I have.

Judge BELL. I would rather have gone to the Justice Department and started getting organized; but I thought if I would not stay and listen now, then maybe people would say that I would never listen. So I was glad to stay. It was informative.

Chairman EASTLAND. Senator Heinz?

Senator HEINZ. Judge Bell, let me reiterate Senator Rieggle's welcome and compliments to you on your willingness to not only be so available, but to be so attentive to all the proceedings of the committee.

I would like to talk with you for a few minutes about private clubs and the *Biscayne Bay Yacht Club* case.

Talking about the private clubs not so much from any issue arising out of the question of freedom of association, but, as you will recall, you have been criticized for failing to disqualify yourself from the *Biscayne Bay Yacht Club* decision.

There were those who argued that since the case involved a challenge to discriminatory membership practices by private clubs, it, therefore, posed a genuine conflict of interest for you in light of your own club affiliations.

Your response to that was that the case simply involved a judicial determination of the extent to which the yacht club had a nexus with a governmental unit. You felt that since the clubs to which you belonged did not fit into that category, the case did not involve a broader challenge of discrimination by private clubs and, therefore, the Driving Club and the Capital City Club would not be involved.

As I understand it, you joined the Capital City Club in 1955 and the Piedmont Driving Club in 1956?

Judge BELL. I think so.

Senator HEINZ. I assume you paid a membership fee and paid dues?

Judge BELL. Yes.

Senator HEINZ. Does that cost much money?

Judge BELL. I do not know what it cost. It is not inexpensive.

You have been to those clubs, haven't you?

Senator HEINZ. No.

Judge BELL. Excuse me for asking you that.

They are nice clubs. They are expensive.

One of them is in the middle of downtown Atlanta. It is in a high property area surrounded by skyscrapers. It costs money to join.

Senator HEINZ. It might cost what, \$500 a year, to belong to either one?

Judge BELL. It costs more than that. I think it costs about a thousand dollars a year. I believe it is about \$1,000 a year, roughly, for each one.

I am a nonresident member of the Oglethorpe Club in Savannah. That costs a good deal less. I think it costs \$300 a year to be a nonresident member.

Senator HEINZ. Correct me if I am wrong, but I believe that you said on Tuesday when you were before the committee that after you were appointed to the fifth circuit, you became an honorary member of both those clubs. Is that right?

Judge BELL. That is right.

Senator HEINZ. As I understand it, also according to your testimony, honorary membership means you can use the facilities but you pay no dues, at least in one of the clubs.

Judge BELL. In one club you pay something like \$60 a year or \$120 a year, or some small amount of dues. In the other one you paid nothing. In the Capital City Club you paid nothing.

Senator HEINZ. So a nominal amount. So I suppose it is fair to say that that is like getting a \$1,000 a year tax-free contribution in kind from those clubs?

Judge BELL. Right. That has been ruled on by the Revenue Department, if you are interested in that—not from me, but by some other judges.

Senator HEINZ. I was not questioning your tax returns.

Judge BELL. I did not know if you were or not.

Senator HEINZ. Should I?

Judge BELL. You can talk to the Internal Revenue Service. A person never knows how they stand with the tax returns.

Senator HEINZ. My question goes back to your participation in *Biscayne Yacht Club* case.

You were still, and I gather up to this point still are, absent the action you plan to take tomorrow, an honorary member of these clubs. Is that right?

Judge BELL. Right.

Senator HEINZ. In light of that, somebody could conclude that you were receiving a very substantial benefit, perhaps as much as \$2,000 a year, from these two clubs when you ruled on the *Biscayne Bay* case. In light of that, would you still say that you used accurate judgment, good judgment, when you decided not to inform the litigants in the case of your membership status, the benefits derived from the particular kind of membership status, when you did not disqualify yourself from the *Biscayne Bay Club* case?

Judge BELL. Absolutely. Can I see a copy of the opinion?

I want to talk about this. Are you reading from the opinion?

Senator HEINZ. No.

[Witness examines document.]

Senator HEINZ. I do have a copy of the opinion now.

Judge BELL. So do I.

Mr. Rauh testified that I should have disqualified myself.

You have asked this twice.

I want to tell you about this case. I have already told you that in my judgment it involved something different from the right under freedom of association as decided by the Supreme Court in the *Moose Club* case to be a member of a private club, per se.

Senator HEINZ. The *Moose Club* is a Pennsylvania case.

Judge BELL. I am aware of that.

Mr. Rauh said Judge Brown disqualified himself in this case. If you will look at the opinion, Judge Brown filed a dissenting opinion in the case. He did not disqualify himself. The judge who disqualified himself was Judge Dyer. He did not participate in the consideration or disposition of this appeal.

Judge Dyer lives in Miami.

Each person has his own conscience. I do not know why Judge Dyer recused.

That left 14 judges on the case.

That is on page 17.

I told you last week that I do not want to get other judges into my problem with you about this.

I told you last week that we had a meeting of the court once to decide what we ought to do about private clubs. We decided we would stay in private clubs and that if something came up involving a club that you were in, of course you would be disqualified.

I want to say, sir, that of these judges nearly every one would have been disqualified if I was disqualified. There would be nobody to sit on the case except one or two judges. I do not want to use names.

Senator HEINZ. Let me make myself clear.

Judge BELL. I do not want to use names because I do not want to embarrass anyone else.

Senator HEINZ. I am not criticizing you or any other judge for being a member of a private club. That is not the intent of my line of questioning.

I am questioning whether it is right to be accepting a free \$1,000 membership in two clubs, a benefit of some \$2,000 a year, a financial interest which one can construe was a very real one. It seems to me that that is a different issue than whether you are a dues paying member of a club.

When you and your other justices on the fifth circuit sat down and you discussed private clubs and you discussed freedom of association—well and good—and you came to a policy, that is one thing. But did you discuss having free memberships? Did you discuss taking other kinds of payments?

Judge BELL. No; we did not discuss it.

I advised NBC about a week ago, when they were running a story like this, that they might want to check with the Judicial Conference of the United States, the Ethics Committee, and see what they ruled on this. As I understand it, they ruled that there was nothing wrong with it.

Senator HEINZ. There is nothing wrong with belonging to a club or nothing wrong with having a free club membership?

Judge BELL. A free club membership. That is my understanding of the matter.

I directed them to check with the Judicial Conference to get the ruling on that. I have not seen anything else in the paper about it or on the television. It will be in there today, of course, after this.

That is all I know about it.

There was a ruling, as I understand it. I talked with the chairman of the committee about it. I think I did.

Senator HEINZ. There is a particular singularity here that perhaps should be examined by either us or the Judicial Conference.

It is not as if, by virtue of becoming a member of the fifth circuit, suddenly you were offered new memberships in clubs that you had not heretofore considered joining because you could not afford to. You had been a member. You had memberships in these two clubs. You had been paying your \$1,000.

Judge BELL. Right.

There is one judge, a State judge, not a Federal judge, who continued to pay his dues in the Driving Club. That has been in the paper. I would be glad to give you his name, but I do not think it would serve any useful purpose. He was a State trial judge.

There is no doubt about that.

Let me tell you about some other clubs that I had honorary memberships in, that all judges had.

There is a club in Texas called the Fort Worth Club. Everybody who has ever been on the fifth circuit, I suppose, is an honorary member of the Fort Worth Club.

I have not been there in years. The last time I went I looked on the board in the main room and there was my name up there as an honorary member.

Senator HEINZ. The reason I am not addressing those other club memberships, Judge Bell, is because I think it is certainly understandable that someone will even put you on a club membership list sometimes without your knowing it.

There are an awful lot of people around here who find out that they are main speakers at this and main speakers at that without that ever having been confirmed.

That is why I have restricted my question just to the two clubs you were a member of for several years prior to the time you became a justice.

I think you have answered my question. I do not wish to belabor it.

Notwithstanding the fact that these were clubs to which you did belong, when you became a justice, your dues were, for all intents and purposes, eliminated. Nonetheless, you did not feel that there was any reason to be sensitive to a conflict of interest. You have stated your reasons.

I am not prejudging your reasons. I just wanted to make sure I had all the facts.

Judge BELL. You have all the facts.

Had this club involved discriminatory practice against a purely private club, I would have been clearly disqualified and there would be no reason for anybody to ask any question about it because I would have disqualified myself.

But this involved a different issue. That is about all I can say about it.

Senator HEINZ. I have something that comes to us after the fact. It is Advisory Opinion No. 47, dated October 14, 1975, Advisory Committee on Judicial Activities.

This is the kind of ruling that you are talking about?

Judge BELL. I have never seen the ruling. I have just heard about it.

Senator HEINZ. I have not had time to look at it. My assistant just gave it to me now.

Judge BELL. Is it signed? Is anybody's name on it? It doesn't matter. I just wondered.

Senator HEINZ. It is not signed. It is simply identified as Advisory Opinion No. 47 of the Advisory Committee on Judicial Activities.

Judge BELL. I think that would be the committee.

Senator HEINZ. The subject is "acceptance of complimentary memberships in professional and social clubs."

According to this advisory opinion, it says in the last paragraph:

If the value of the honorary or complimentary membership exceeds \$100, it must, of course, be reported as a gift on the Semi-annual Public Report of Extrajudicial Income.

It also says:

Cross references:

Canons 2, 5C(4) and 6.

Advisory Opinions Nos. 17 and 19.

By that, I take it that there is a semiannual public report of extrajudicial income that a Federal judge must make. Is that correct?

Judge BELL. Right.

You file it in July and January.

Senator HEINZ. Did you report the club memberships after that?

Judge BELL. I do not think I did. I only filed one time after that before I resigned from the court. I do not believe I did. I am not certain of that. I would be glad to file a copy of the report.

Senator HEINZ. Prior to this report, you are fairly certain you did not——

Judge BELL. I know I did not.

Senator HEINZ [continuing]. Make that public on your semiannual report?

Judge BELL. I know I did not.

[The Advisory Opinion No. 47 referred to follows.]

ADVISORY COMMITTEE ON JUDICIAL ACTIVITIES

(Advisory Opinion No. 47)

ACCEPTANCE OF COMPLIMENTARY MEMBERSHIPS IN PROFESSIONAL AND SOCIAL CLUBS

A judge inquires as to the propriety of accepting an honorary or complimentary membership or the use of club facilities without membership in a purely social club, in this instance a social club which has recreational facilities including a golf course. He would pay the usual fees and charges for meals, greens fees and other services but would not be required to pay dues or an initiation fee. Similar inquiries have been made regarding other social and professional clubs.

It appears to be a rather common and long-standing practice in some communities to extend honorary memberships to judges, members of legislative bodies, high-ranking members of the executive branches of government, members of the clergy, military officers and college or university officials.

The honorary or complimentary membership is a gift or favor and the propriety of its receipt is most directly covered by Canon 5C(4), which provides in part:

C. Financial Activities.

* * * * *

(4) Neither a judge nor a member of his family residing in his household should accept a gift, bequest, favor, or loan from anyone except as follows:

(a) A judge may accept a gift incident to a public testimonial to him . . . ;

* * * * *

(c) A judge or a member of his family residing in his household may accept any other gift, bequest, favor or loan only if the donor is not a party or other person whose interests have come or are likely to come before him, and, if its value exceeds \$100, the judge reports it in the same manner as he reports compensation in Canon 6C.

The receipt of an honorary membership in a purely social club would be permitted under Canon 5C(4) (c).

Before accepting such membership the judge should ascertain that the club is not involved or likely to become involved in litigation in the federal court.

He must also consider whether the offer of the honorary membership is designed to exploit his judicial position. Just as a judge may not utilize the power and prestige of his office to persuade others to contribute to a charitable enterprise, he must be sure that the honorary membership is not being offered to persuade others to become members of the club, or lend the prestige of his office to advance the private interests of the club.

If the club offers such memberships to a broader group of public servants than judges, i.e. legislators, clergy, etc. or, if it has a tradition of extending such memberships and offers them to all persons holding that position, there is less likelihood that the appearance of influencing the judge will arise. If he has not previously been a member of the club and is singled out for such treatment, he should consider carefully how the receipt of this gift membership may appear to others. The judge must be especially cautious in this respect if the officers or directors or the members of the committee conferring such membership are attorneys practicing before him whereby the membership could convey the impression that some lawyers are in a special position to influence him.

If the value of the honorary or complimentary membership exceeds \$100, it must, of course, be reported as a gift on the Semi-annual Public Report of Extrajudicial Income.

Cross references

Canons 2, 5C(4) and 6.

Advisory Opinions Nos. 17 and 19.

Senator HEINZ. Thank you.

Judge Bell, I would like to turn to a different question. This is just to make sure that we have the facts right.

This has to do with the letter in behalf of Judge Carswell that has been brought up many times. I do not wish to beat a dead horse.

As I understand it—and please correct me if the record as I state it is in any way wrong—you were asked by a group of newsmen several weeks ago to defend the letter of recommendation that you wrote in 1970 in support of Judge Carswell's nomination to the Supreme Court. Is that correct?

Is that the first time—

Judge BELL. I was not asked to defend it. Well, I do not know what I was asked. I was in Plains, Ga.

Senator HEINZ. You were interviewed?

Judge BELL. I was not interviewed. I was badgered. This was the first question that somebody got up and asked Governor Carter. They didn't ask me. Then they asked me. I had never thought of it in years.

Senator HEINZ. You were subject to extensive questioning?

Judge BELL. I was. That is the freedom of the press. I understand that. I was caught cold. I answered. When I got back home, ABC had on a program showing a letter that I had written and the date was different. There was 5 days difference. I simply issued a statement saying the date was incorrect.

If I went back and studied all of that and got all of the facts together—I do not know how incorrect I was.

At any rate, I wrote the letter. I have said I was not going to repudiate Judge Carswell. I thought that that was over with.

Senator HEINZ. I am not asking you to repudiate the letter or Judge Carswell or anything else. I am trying to make sure that we have the facts on the record of this committee, Judge Bell.

Judge BELL. All right.

Senator HEINZ. As I further understand it, in response to that intensive questioning at length that you underwent, you stated:

It turned out that he had made a speech that I didn't know about when he was running for the state legislature. Of course I did not know about that at the time.

That question, accurate or inaccurate, was reported in the Washington Post on the 21st of December.

Judge BELL. I said that. That is why I issued the statement 2 days later or 3 days later saying I was incorrect.

Senator HEINZ. What was the date of that statement that you made?

Judge BELL. This happened on Monday. On Wednesday, I believe, 2 days later, I issued a statement saying I was mistaken as to the date and that I had to know about the speech he had made when I wrote the letter. We have a copy of that. We would be glad to give you a copy of that.

Senator HEINZ. I think that would be good to have for the record. Thank you.

Chairman EASTLAND. That will be inserted in the record at this point.

[The text released from Plains, Ga., on Wednesday, December 22, 1976, by Griffin B. Bell, follows.]

Yesterday in Plains at the news conference I was mistaken in saying that I wrote the letter of recommendation on Judge Carswell before learning of the speech on segregation which he had made several years earlier while a candidate in Georgia for the State legislature. It appears that I wrote the letter of January 26, 1970. According to news reports this was several days after the account of the speech became public.

Thereafter, and shortly before the vote in the Senate on the confirmation, I joined a group of judges at the request of Judge Carswell in sending a telegram reiterating the recommendation of him. [I do not have a copy of the letter or the telegram].

The letter of January 26, as well as letters of recommendation in prior years for other positions were written at the request of Judge Carswell, a law school classmate and friend.

With respect to my membership in private clubs, I believe that the Attorney General is a symbol of equality under law and therefore I should and will resign my membership in all private clubs to which I now belong.

GRIFFIN B. BELL.

Senator HEINZ. We discussed your political activity and you were quite right in pointing out that you uniquely have pledged to stay out of future campaigns. I think that is very much appreciated by this committee.

One of the things that you said during our earlier colloquy is that when you were working on behalf of Governor Carter, you helped raise funds before the Pennsylvania primary, a very critical primary—not just for you, by the way. [Laughter.]

You and I understood the reference. It was a bipartisan thing.

Are you in a position to make available to the committee what individuals or special interest groups or political action committees you might have solicited, either successfully or unsuccessfully, on behalf of Governor Carter?

Judge BELL. I haven't got my testimony. I think I said I did not solicit anyone. I gave \$1,000.

I got two people. Henry L. Bowden and John H. Stembler, Sr., to be cochairmen. They invited 50 or 60 people to come to a breakfast at the Commerce Club in Atlanta, which is an integrated club, I hasten to say, and utterly without discrimination.

They came there to the meeting. He spoke and asked people to get money. We got up some money. I did not get up any, but I gave \$1,000 the same day as the breakfast.

The names of the people who gave money are on file with the Federal Government here in Washington somewhere. I will be glad—I don't have any way to get that information, but they are listed. Whoever gave the money is listed.

I don't remember asking anybody for any money. That was not my purpose in doing it.

Senator HEINZ. And the two gentlemen who were the cochairmen of the lunch are Atlanta businessmen?

Judge BELL. One is a lawyer and chairman of the board of trustees of Emory University. He is a retired city attorney of Atlanta. That is Bowden.

Stempler is a businessman in Atlanta. They both live right there.

I am sure they would be glad to let everybody know what has already been in the newspapers several times. That is that they were cochairmen of this breakfast.

We were very proud of Governor Carter in Georgia during this time. We still are. But this was the first time we ever had a chance to get back into the Union. I might say it's hard to get back all the way. [Laughter.]

Senator HEINZ. With all due respect to the chairman, I want you to know that the chairman has been holding the fort here, along with many other very fine colleagues from Southern States, for quite some time.

Judge BELL. But to answer your question, I don't remember getting up any money.

You have my testimony there from Tuesday or Wednesday. You know what I said.

Senator HEINZ. What you are saying amplifies upon what you said. There was a minor ambiguity in it.

You said you had a role in that breakfast, that most of the money that was raised was in Georgia. It was just not clear that you had totally confined yourself to the extent to which you just described.

Judge BELL. I do not want to mislead you.

If I had thought of somebody that would give some money, I would have raised it. He needed money in the Pennsylvania primary. That was a crucial primary. If I had known of someone to call—but I had been gone a long time. I had lost any expertise I might have had for raising money.

I knew these two men whom I mentioned and I knew they would be good cochairmen and they would organize the breakfast. They organized it in 24 hours.

I do not remember calling anyone. I gave my own money.

If I had known someone, I would have called them.

There were Republicans at this meeting. That may shock you. They were giving money. There were people of every view there giving money because they all had the same idea I had, which was that we were going to get back in the Union. It is going to be tough, but we will fight until we get back in.

Senator HEINZ. I was not aware that that was the main basis of Governor Carter's campaign, but I am pleased that a close political confidant has now revealed it to us.

In any event, I think we are all looking forward to the 20th, this Thursday.

I have one other question.

As you may be aware, the Peterson Commission has proposed pay raises for Members of Congress, the executive branch, and judicial personnel.

One of the things that the Peterson Commission has recommended, particularly with respect to the Congress, is that the pay raises be tied to an ethics package.

Senator Riegle was very complimentary about the post of Attorney General and really said something I agree with, which is that the Attorney General really sets the ethical tone for the conduct of Government.

I was wondering what comments, first, you would have on the Peterson Commission's proposed pay raise and whether you personally favor the typing of congressional pay raises to an ethics reform package.

You know as well as I do this is obviously a pretty tough question to answer because, depending on how you answer it, you will have some people for you and some people against you, at least for a while.

I do mean the question quite seriously because I would imagine that President Carter, who has to make the determination on whether he is going to submit a recommendation, will ask you for your views on whether the congressional pay raise should be tied to an ethics package.

Would you care to give us any views at this time?

Judge BELL. I will do it in a tangential way.

I testified before the Peterson Commission as a former Federal judge. This came up there.

I think that Chairman Peterson or somebody on the Commission was saying that any pay raise ought to be tied to a strict ethical set of regulations.

That was the first time I knew they were making that approach.

I had been on the court when the Judicial Conference put in this income disclosure regulation and, of course, followed those things for a long time.

A good number of the judges resented that because the Congress was not following anything, they didn't think. Even the Supreme Court did not follow it except on a voluntary basis. So a lot of the judges could not understand why they have been singled out.

In the last Congress, I think in the Senate—it may have had something to do with the special prosecutor bill—there was a disclosure section in there.

Everybody, I think, including the Congressmen, Senators, and judges, had to file a financial disclosure with the General Accounting Office.

I was chairman of the Judicial Administration Division of the American Bar Association when this happened.

The Federal judges section of that division, it is made up of State and Federal judges and lawyers, asked that I represent them to try to get it changed to the extent that they could continue to file with the court agents or administrative office or with the Chief Justice, somebody. They did not want to have to file with the General Accounting Office because they thought that was sort of an intrusion upon the idea of separation of powers.

I feel the same way when you ask me to comment on what ought to be done about the Members of the Congress. I do not know that I ought to be telling Members of Congress what they ought to be doing.

I do not mind telling the executive branch. I do not mind advising the judiciary because they asked me to when I was a lawyer. I am sure they would be glad to have me advise them now.

But I will say this: I think that we are at the crossroads in this country where if we are going to restore trust in the Government, we are going to all have to file financial statements. We will all have to file income disclosure statements periodically. This is whatever branch of the government we are in.

That goes for a number of officials, not just the top people. It will have to go down a good ways in government.

I think people resist this because they do not want to be written up in the newspapers. I hear a lot of people say that. It is embarrassing. A lot of people say: I have such a little amount of money that I hate for people to know how poor I am.

My answer is that it only hurts one time. It is old news after one time. You might as well suffer it one time and get it over with. So I do not object to that.

I filed a financial statement with this committee which I did not want to make public at this time because I have got to put one on another form within 30 days after I am confirmed, if I am confirmed. I will file under the regulations that Governor Carter has. That will be made public.

Generally speaking, I think we are going to have to go to a disclosure. I favor disclosure. I think it ought to be across the board. I think you will see it spread to the State and local governments also.

We must restore the confidence of the people in the government.

I am an outsider.

Some of those people who came here last week, that is why they came. They want to have something to do with the government. People want to trust the government.

We are living in a time when people are just yearning to have good people in the government and people they can trust. I think it is part of it.

So for myself, I am glad to disclose. I recommend it for all people in the government—State, Federal, or local.

Senator HEINZ. I have just one further inquiry.

I refer you to an article in yesterday's New York Times Book Review, which I am sure you have not had a chance to read unless you are even more remarkable—

Judge BELL. Maybe I should hire some people to read for me.

Senator HEINZ. There is a book review by Robert Jay Lifton of a book entitled, "Wanted: The Search for Nazis in America" by Howard Blum.

I have not read the book. I read only the book review.

The book appears to document, according to the review, several true case histories of Nazi war criminals who came here to America and who, for one reason or another, were not rooted out and brought to justice.

There is an implication in the book that some units of Government—and one reference is made to the Immigration and Naturalization Service—have been less than enthusiastic about pursuing this, what I think is an absolutely necessary course of action.

My question to you is: Would you think that you might see fit, in the event that you become Attorney General, to find a way to look into this matter thoroughly and on an ongoing basis?

I think there is enough smoke here to suggest there may be some fire. As we know, there are many people, such as Simon Wiesenthal, who have spent years tracking down these mass murderers.

I think we would all agree that anybody who participated in any such heinous act must be brought to justice, particularly if we want

to reinforce the lesson of history that we do not ever want to see it repeated.

Judge BELL. What is the name of the book?

Senator HEINZ. "Wanted!"

With the Chairman's indulgence, I will ask that the book review be made a part of the record.

Senator RIEGLE [acting chairman]. It will be.

[The book review referred to follows.]

[From the New York Times Book Review, Jan. 16, 1977]

HIDING OUT IN AMERICA

Wanted! The Search for Nazis in America. By Howard Blum.

(By Robert Jay Lifton)

Survivors of Nazi death camps have been called "collectors of justice." They seek something beyond economic or social restitution—something closer to acknowledgement of crimes committed against them and punishment of those responsible, in order to re-establish at least the semblance of a moral universe. Their feelings can of course include hunger for revenge, but I think the more fundamental impulse is toward a reconstruction of meaning, toward a sense of justice.

Yet from the time of Plato and before, justice has been the most elusive of principles, a kind of utopian goal never fully clear in theory and rarely even approximated in practice. More clearly recognizable, on the basis of endless experience, is injustice.

For instance, we recognize the existence of injustice when a Circassian (of an ethnic group from Southern Russia) who had been active with the Nazis in rounding up Jews for slaughter surfaces as a local political boss in Paterson, N.J., able to manipulate the police and use Congressional influence to suppress the truth about his background. Or when the man who, as a prominent figure in the Fascist Iron Guard in Rumania, led a national massacre of thousands of Jews, reappears in Michigan as the spiritual leader of the Rumanian Orthodox Church in America; is widely honored, even invited to offer the opening prayer before the United States Senate ("Almighty God . . . who has made America trustee of priceless human liberty and dignity . . .") and uses his office to make "instant Priests" of fellow Iron Guardists in an effort to reconstitute that organization so that it may return to power in Rumania. Or when a former Croatian Minister of the Interior under a puppet Nazi government, who supervised the arrest of the 30,000 Jews under his jurisdiction, 90 percent of whom were murdered, lives out his retirement in a comfortable California beachhouse ("the children love the beach") while pleasantly passing the time with his card-playing cronies. Or when a former officer of the Latvian SS, actively involved in killing Jews, spends his golden years as a gentleman-carpenter in a Long Island suburb.

Not much justice in all this to offer survivor-collectors, or the rest of us either for that matter.

One senses from "Wanted!", Howard Blum's dedicated account, that these four American success stories are at least partly attributable to general disinterest and disbelief in Nazi atrocities. There is something to be learned from the ease with which each man shifts from enthusiastic participation in genocide to proper middle-class life. Their neighbors see, and want to believe in, only the latter. They admire these former Nazis for their pleasant manner, friendly greetings to everyone on the block, and promptness in raking leaves and cutting grass. As one of their mailmen put it: "What he did years ago, he did then. People change. He's just a nice old guy, always tipping his hat and asking about your health. Shoot, he can't be no Nazi. Why he even keeps an American flag on his door." We begin to wonder how many of us really want to know—are capable of believing—what the Nazis actually did.

Beyond denial and numbing there is scandal—ugly official scandal. It begins with the illegal admission of these Nazis to the United States and extends to high-level support for them, recruitment and protection of some of them by the

C.I.A. and possibly the F.B.I. Generous financial support has been available from unknown sources for legal and illegal maneuvers. There has been a sordid series of cover-up operations within the Immigration and Naturalization Service, including interference with attempted investigations, the "losing" and stealing of files, the immobilization of honest investigators, and God knows how many other sleazy bureaucratic maneuvers.

There is even a Nixon connection: his support for Valerian Trifa, the Iron Guard bishop, including sponsorship of his Senate prayer; sponsorship also of the permanent entry visa of Trifa's notorious associate and Iron Guard-Nazi financier, Nicolae Malaxa, first through a special bill and, when that failed, through a dummy corporation (its address was that of the Nixon law firm, and its vice president and secretary two of Nixon's closest associates) around whose "strategic" economic importance Malaxa's permanent entry visa was successfully argued.

But as in the case of Watergate, the problem is by no means just Nixon. At the very least we can say that these Nazi war criminals have been able to mobilize high-level political influence in American Government circles. We know now that some, perhaps most, of this influence stems from C.I.A. employment of Nazis for "anti-Communist" purposes. Certainly the American obsession with Communism would seem to have had a great deal to do with the safe haven these Nazis have found here. As Oscar Karbach, president of the World Jewish Congress, is quoted as saying, "A Nazi didn't need to run to Argentina. America has been an even better hideout." Anti-Communism provided an all-purpose passport—for admission, permanent residence, citizenship, protection, respect, and religious, financial and political support.

There has been a great deal of discussion recently about who did what to whom during the McCarthyite 50's. In the American experience of these Nazis we see once again the crucial distinction between recognizing real Communist oppression in Russia and Eastern Europe on the one hand; and on the other, the evangelical-political polarization of absolute Communist evil and equally absolute American virtue. *Anything* done in the name of eliminating that evil—that Communist "plague"—was automatically legitimated. We can say that the protection and enlistment of Nazi criminals was the ultimate form of moral degradation accompanying that totalistic American crusade. And we do well to keep in mind that the original Nazi movement emerged from similar, purifying aims.

There are a few heroes in this book who fought the coverup against all odds. Two of them are Tony DeVito, long-time I.N.S. official who took on a personal mission of pursuing Nazis in the face of the direct resistance of his own agency; and Dr. Charles Kremer, a Rumanian-born Jewish dentist, now retired, whose New York practice had always to compete with his personal mission of exposing the crimes of fellow Rumanian, Valerian Trifa. Neither of these men had been an inmate in a Nazi death camp, but both took on the survivor commitment to bearing witness. With what could be called methodical frenzy they became—indeed staked their entire moral existence on becoming—collectors of justice. "Normal" people do not take on such missions. Their pain and struggles suggest that a touch of madness—or at least a willingness to risk one's equilibrium or sanity—may be a requirement for pursuing these matters. Each was energized in this "creative madness" by an indelible image of the holocaust.

DeVito's indelible image was of Dachau a few hours after its liberation by the Seventh Army, an image that informed his persistent investigation of Nazis 20 years later. He found his opportunity to transcend meaningless bureaucratic function within the I.N.S., when the Hermine Braunsteiner Ryan case was virtually forced on that agency by a front-page article in The New York Times exposing the Queens housewife (on the basis of information provided by Simon Wiesenthal, the Austrian Nazi-hunter) as a former guard and supervisor at the Ravensbruck and Majdanek camps, notorious for her acts of murder and cruelty.

That case turned out to be a key event in the story of Nazis in America for several important reasons. The publicity generated around it has to some extent blown open the whole question of Nazi criminals in America and has made it much more difficult for I.N.S. and others to continue to suppress that issue. Jewish groups felt encouraged to make further efforts to stimulate official action against these known Nazis. During the course of the trial Oscar Karbach sought out DeVito and handed him a list of 59 such Nazis living in America, including the four featured in Blum's book. Finally, there was a suggestion of potential

justice in the outcome of the case: Ryan's deportation to West Germany, where she is to stand trial.

But DeVito came to see that outcome as a kind of fluke, more a consequence of the West German request for extradition and of Ryan's voluntary renunciation of her citizenship (in apparent expectation of a deal with I.N.S.), which permitted her immediate deportation. And even the Ryan case did not deter the I.N.S. from its constraints on DeVito's efforts to bring some of these Nazis to justice. His continuing frustration leads to his resignation, and to a state of suspiciousness bordering on paranoia.

We can well understand his becoming convinced that "Odessa" or some such international Nazi organization is behind the vast political influence and money involved, and the frequent threats made to witnesses and to DeVito's German wife (in German). There was also the disturbing death, apparently the suicide (but the book's implication is that we cannot be sure) of DeVito's only powerful supporter, United States Attorney Robert Morse. The brother of Arthur Morse, author of "Why Six Million Died," Robert Morse had, just six months earlier, demanded in writing that the I.N.S. investigate these Nazis. Not just DeVito but the reader, and presumably the author too, cannot be sure where sordid reality ends and fantasy begins. But when DeVito becomes preoccupied with "the Judenrat which runs the Immigration Service," we are concerned both about his mental state and the unfortunate metaphor.

Dr. Kremer's indelible image emerged from a description he heard in New York, soon after his own escape from Europe, of the Iron Guard massacre of Jews in Bucharest earlier that year—including the "kosher butchering" of hundreds in the municipal slaughter house where they were undressed and taken to chopping blocks, their throats cut in a grotesque parody of the ritual slaughter of animals. Kremer has kept that report for 35 years in the top drawer of his filing cabinet, on which he also keeps a skull as a reminder of the Jewish dead. This ingenious, difficult, cantankerous man persisted, like DeVito, where ordinary men would have given up. He gathered every possible bit of information about Trifa from various parts of the United States and from Rumania, and besieged American officials with endless letters, telegrams and phone calls, somehow calling forth the conviction that he would eventually prevail. The book ends with Kremer upset at one of the many delays of the Trifa trial ("How long are they going to wait? I'm 79 and I'm not prepared to wait forever.").

"Wanted!" is written in simple narrative form, almost in the fashion of an adventure story. There are pitfalls in this approach. It lends itself all too readily to understanding the whole phenomenon in terms of pursuit, escape and detective work. The media have demonstrated their capacity to trivialize the subject of Nazis as much as any other, and one anticipates with some trepidation the film of this book. Reading it makes one yearn for a more considered exploration of the whole phenomenon of European Nazis in America. Nonetheless, Blum has written a very important book, to which he brings a compelling blend of investigative skill and moral passion. America may be tired of scandals, but we had better look into this one.

I think that many, in reading the book, will share my experience of direct and continuous anger. One is struck, for instance, by the contrast between the self-righteous comfort of these victimizers and the anguish of their victims and accusers. One must ponder the differences between justice and vengeance, but on such issues a measure of anger is inseparable from engagement. All things considered, I would say we must insist upon the importance of tracking down and bring to justice every last Nazi war criminal, be he 50 or 90, not for the pleasure of seeing him languish in jail for his remaining years, but to insist that crimes of this kind be acknowledged, that the ideal of justice is not forgotten.

Blum quotes the simple last words of a 14-year-old Polish-Jewish girl hung by Hermine Braunsteiner: "Remember me." That is of course the cry of King Hamlet's ghost, and of the ghosts of each of the millions upon millions of individual Nazi victims, Jews and others. We must honor DeVito and Kremer for responding to that call as they did, recognizing the special meaning that kind of response has for surviving victims as collectors of justice. But the souls for whom remembering has greatest importance, it must be added, are not those of the dead or even the survivors, but our own.

Judge BELL. I will look into it. As you know, I do not favor any sort of coverup. I do not want to see the processes of the law sub-

verted by people who are not doing their duty. I do not want to see the processes of law misused. If I find that they are misused, there will be something done about it.

I am making a list as we go along of things that need to be done like this. This will go on the list.

You cannot imagine how many things there are that need doing properly. There are lawsuits and that sort of thing. Somebody has to move in right away. We will put this on a list.

Senator HEINZ. I can well imagine, Judge Bell.

Mr. Chairman, that completes my questions.

Judge Bell, thank you very much.

Judge BELL. Thank you, Senator Heinz.

Senator RIEGLE [acting chairman]. There is one piece of unfinished business. That is the press statement I guess you made on Wednesday or late in the week. Is that here? Could it be brought forward so we would have that as a part of the record?

Judge BELL. It is a statement released on Wednesday.

Senator RIEGLE. Can we have it today?

Judge BELL. Yes; we will get it.

That was the private clubs statement, also, in two paragraphs.

Senator HEINZ. Mr. Chairman, I have one very minor point here, a question for Judge Bell.

I again would like to compliment him on his statement of how he would handle conflict of interest as the head of the Justice Department.

One question that I did ask your partner to supply was a definition of the term "substantial" with respect to clause No. 8. That is where you indicate that any substantial client of the law firm would be identified.

Judge BELL. He told me that he was going to meet with you about that.

Senator HEINZ. We had a meeting. I do not know whether he has had a chance to define what substantial will be. I know he was either going to get back to me or Judge Bell with that information.

Mr. ISLER. We have a definition—

Senator RIEGLE. Identify yourself.

Judge BELL. This is William Isler, my former partner.

Senator RIEGLE. Come up and finish your response. I just wanted to make sure we had your name in the hearing.

Judge BELL. I asked him to come up because he had been working on conflicts of interest in the law firm and helping me work this out.

Mr. ISLER. Senator Heinz, I do not have a copy of the statement that you were referring to. I have it in my papers. We did have a definition in there. It is toward the end of that paper.

[The statement referred to is printed above at page 35.]

Senator HEINZ. The two-page conflict of interest?

Mr. ISLER. Yes; toward the end of it is a definition that talks in terms of the substantial contribution to the law firm.

I am not quoting, but I am remembering.

A substantial contribution to the law firm over a continuous period of time. When you and I talked, you talked in terms of perhaps putting that down more in terms of a formula so that we could ascertain whom we are talking about. I have not had time to do that.

Senator HEINZ. That is something you will give to us?

Mr. ISLER. In the beginning of that statement, Senator, you will notice that Judge Bell says he will issue a directive at the Department of Justice and that that directive will be made available to the members of this committee.

I think that that is covered, but we have not gotten it down. Thank you for putting that on the record.

Senator RIEGLE. Senator Sasser?

Senator SASSER. I have no further questions, Mr. Chairman.

Senator RIEGLE. Mr. Mathias?

Senator MATHIAS. Judge, it is a pleasure to see you back here.

Judge BELL. This has become a life's avocation.

[Laughter.]

Senator MATHIAS. I was particularly happy with your response to Senator Heinz's question with regard to the subject of disclosure. I agree with you that full disclosure is an absolute necessity.

I also agree with you that it is more painful to disclose what you do not have than what you do have.

Ever since I have been in the Senate, I have made a full disclosure. That is not very difficult. Most of what I own you can either live in or ride in or eat. [Laughter.]

What is painful is listing those debts. That is tough.

Judge BELL. We ought to get some agreement with the press that they will not disclose how poor people are, that they will only write about the wealthy. I do not believe we will be able to do that. [Laughter.]

Senator MATHIAS. Judge, I certainly do not anticipate that the new President and new Vice President or any new member of the Cabinet is going to have any serious legal problem. But it is the unfortunate fact that in this room in the last 6 or 8 years we have had to discuss that kind of problem.

I wonder what your intention would be in the unlikely event that some legal difficulty would arise involving the President or the Vice President or one of your colleagues in the Cabinet. What would be your intention as to handling that problem?

Would you attempt to deal with it personally? Would you leave it to, let's say, the Assistant Attorney General in charge of the Criminal Division? Would you leave it to some other official of the Department who was more insulated from the political side of Government than the Attorney General can ever be?

Judge BELL. I have thought about that a good deal.

I think it would be a mistake for me to try to handle it initially. I think I would refer it to another level and let it work its way up. Maybe it could be handled without ever coming to me, depending on the circumstances.

If it was a civil matter, it could go to the Civil Division. If it was a criminal matter, it could go to the Criminal Division.

It may be, depending on who finally ends up as deputy, that it might even be referred to that person.

I know it would be a mistake for me to go in from the top and try to make a judgment about something like that. I need help. I need somebody who, as you say, would be insulated from any claim that politics would be involved.

I notice what they are doing over there now. For example, with an FBI investigation they start on another level and it works its way up to the deputy and the Attorney General.

Last week on those mail opening matters, that started and worked its way up from a committee of U.S. attorneys which was called in to assess the evidence and assess the case. It worked its way up.

So I would give it some direction along that line.

I will reiterate that I think it would be a mistake for me to be walking around as a revolving law enforcement person telling everybody what they ought to do about these things and handling them myself. I think that would be a mistake.

Senator MATHIAS. A quick review of recent history would indicate the folly. I do not think that is too strong a word to use with reference to the Attorney General immediately involving himself in the legal problems of the President or the Vice President or his colleagues on the Cabinet.

Judge BELL. We will start out on the initial basis, I think I said, as a White House counselor who will be dealing with the Office of Legal Counsel. I have not selected a person. I am trying to find a good deputy. That will be the principal contact.

But the type of thing you are talking about might well get above that level. That is where I would have to be careful.

Senator MATHIAS. That is really the reason we ultimately had to resort to the expedient of a special prosecutor.

Judge BELL. Right.

Senator MATHIAS. Governor Carter has indicated, or at least the press has reported, that he plans to merge some of the existing agencies into a new energy department under a new reorganization statute, which I presume would employ the device of a one-house congressional veto.

There are some indications—at least Joe Kraft in one of his columns reported that Governor Carter may want to ease controls on gasoline under a provision of the Federal Energy Act, which permits this kind of action by the President.

It would be subject to a one-house veto.

There has been a good deal of controversy which has developed among legal scholars on the subject of the one-house veto.

I am wondering whether you believe that it violates the constitutional doctrine of separation of powers which provides for the sharing—since it does, in effect, really merge the powers of the President and the Congress.

Judge BELL. We are gathering some data on that now and trying to reach some conclusion.

We are going to be helped greatly by the judges' pay suit, which is pending in the Court of Claims and ought to be decided pretty soon.

Count II of that suit is based on this very point. That is that the one-house veto is illegal.

However, they decide that, one side or the other can take it to the Supreme Court. That will get this question decided.

That case was argued a good while ago before the Court of Claims. I think it is en banc. I am sure it is en banc.

We will get a decision at least from the court on it.

I am not prepared now to say because I have not studied the question. I would want to study it indepth before I would say what the better side of the law was.

Senator MATHIAS. You may be faced, pretty quickly, with the question of advising the President on the inclusion of the one-house veto and the energy proposal.

Judge BELL. I understand that. That is the reason I have people studying it.

I may have to advise before the Court of Claims even decides this case. I am aware of that problem.

Senator MATHIAS. But you are not prepared to tell us right now what your advice would be on that subject?

Judge BELL. No; I am not.

Senator MATHIAS. Would you anticipate that you would instruct the Justice Department to intervene on either side of the pending litigation?

Judge BELL. In the judges' case?

Senator MATHIAS. Yes.

Judge BELL. The Justice Department is defending it. If they lose, they will have lost on this point, you see. The Justice Department, as I understand it, is defending the case.

Senator MATHIAS. And you do not anticipate any change of direction on the part of the Department after you would enter the Department?

Judge BELL. No.

We would continue to defend it. In fact, I cannot participate in that case because if they win the case on count II, which is the one-house veto point, then I might get \$300 or \$400 back payment myself. I do not know how much I would get, but I would be disqualified. I would have to turn it over to the Deputy.

If the Deputy is disqualified, then I would have to turn it over—I do not know where we would end up.

Judge McGree is a judge, too. Maybe the judge can handle it, too.

Senator MATHIAS. The Library of Congress advises that the Justice Department has intervened in this suit "also challenging the constitutionality of these same congressional veto provisions."

Judge BELL. That is not the way I understood it.

That is probably right if the Library of Congress said it. I have enough troubles without arguing with the Library of Congress.

[Laughter.]

I had understood they were defending the case.

Senator MATHIAS. This is a different case. This is the case of *Clark v. Valeo*.

So you do have some ambiguity in this picture.

If you are thoroughly aware of it, obviously no response is necessary.

Judge BELL. I am aware of it. I am trying to get on top of it.

Senator MATHIAS. There are two cases now pending in which the Justice Department, on the basis of the information that I have, seems to be in somewhat of an ambiguous position.

Judge BELL. What is the case?

Senator MATHIAS. This is *Clark v. Valeo*.

Judge BELL. What court is it pending in?

Senator MATHIAS. It is in the Court of Appeals of the District of Columbia.

Judge BELL. And the other one?

Senator MATHIAS. The other case is *Atkins v. United States* in the Court of Claims.

Judge BELL. That is Judge Atkins from Miami. And you think the Justice Department may be in an inconsistent position in those two cases?

Senator MATHIAS. That is not clear from this very brief precis, but I think it is a matter which would require attention.

Judge BELL. I have one of these lawyers helping me on the Indian case in Maine. I will put one immediately to work on this problem. I see it has to be resolved fast.

Senator MATHIAS. The Department is in two cases.

Judge BELL. Right.

Senator MATHIAS. I may be misreading this summary, but I think it does require some attention.

There is a feeling among lawyers, I think it is widespread in the country, the feeling is that the Antitrust Division brings cases that it really does not have the ability to try.

In your testimony the other day you mentioned that some cases took 10 or 15 years to plea. I can think of one antitrust case, the *Ballard Mills* case, where the Ballard Mills had burned down and the business had been sold and nothing was left but a couple of recipes, I think, by the time the legal mills had ground out the antitrust aspects of the law.

What do you intend to do to insure sufficient and competent staff to try these very important antitrust cases?

Judge BELL. I have been talking to some of the finest young antitrust lawyers in the country who are wanting to come into the Government for a while.

As I said earlier, there is a greater urge now over the country, I find, amongst lawyers to work for the Government. They want to give some time to the Government.

I am very experienced in procedures. I am on the Standing Committee of Rules of the Supreme Court. I have been working with the American College of Trial Lawyers' Special Committee on Complex Litigation.

I plan to put a lot of these people together to work out some way so we can expedite these cases and simplify them.

Also I plan to make wide use of the special employee. If I know a lawyer somewhere who is an expert on something, then I may bring him into the Government for a limited time on an expense basis. One hundred dollars a day, I think, is the most you can pay. You can bring in talent like that.

I had Professor Meador down in Virginia working on a draft of the commission for merit selection of circuit judges. He is a distinguished professor and an expert.

I would hope to get expert help of this sort in these complex cases.

I would want to devise new methods and new procedures. We have left that to the Rules Committee under the Rules Enabling Act, but I think the Justice Department ought to become more active in that.

Senator MATHIAS. Have you considered the possibility of the practice which prevails with regard to judges where a judge who is in

qualified retirement can be called back to the bench? Some of them are as busy as the fully active judges.

Judge BELL. I have.

Senator MATHIAS. There are trial counsel who have retired and are still living here in the metropolitan area.

Judge BELL. I know some of them. In the old days you never thought about a lawyer retiring, but lawyers do retire now and we could get some lawyers. They could work on that basis.

I think we have unlimited resources that we have not tapped.

Senator MATHIAS. There is no question that the kind of delays in the handling of these cases has been a terrible burden to business. It has retarded the economy. It has invoked an injustice to consumers.

Judge BELL. Right.

Senator MATHIAS. Everybody then loses.

Judge BELL. Everybody loses, yes.

Well, I may not have much knowledge, I may not be much of a lawyer and a lot of things like that, but you are touching on something now that I know something about. I will try to do something about it.

Senator MATHIAS. One of the most troublesome cases which confronts the Justice Department is the IBM case. I would suspect it is the biggest case in the Department today. It raises a number of questions of both public policy and of economic policy.

In view of the representation by Spalding and King, do you intend to apply the guidelines that you gave to the committee to recuse yourself as far as IBM is concerned?

Judge BELL. I do.

Let me say that this is such a small client in our office that if the press had asked me if we had represented IBM, I would have to say no. I didn't know they were a client of the firm. They are a minor client, but they are substantial enough that I think I ought not to sit on that case. I will turn that one over to the deputy.

Senator MATHIAS. That was a Georgia tax case.

Judge BELL. Georgia tax case, yes.

One other time I think we made a \$2,000 fee doing something else for them.

Senator MATHIAS. But that is the only work that the firm has ever done for IBM?

Judge BELL. Yes; so far as I know.

It is a high profile matter. I would be criticized, and I think rightly so, if I were to handle that case or participate in the IBM matter. So I will get out of it. I will not get out of it, but I will keep it from coming to me under the order that I plan to put in.

Senator MATHIAS. Where will you send it? Have you thought that far ahead?

Judge BELL. I would hope that the Deputy would not be disqualified. I want to have somebody above the Antitrust Division who can look into it because, as you say, it involves policy matters.

I do not know that the Antitrust Division ought to be the last voice on making policies. I would like the Solicitor General and/or the Deputy Attorney General to look into it.

I do not know enough about that case to make a judgment, but from the things I have heard from judges since it started, it seems to me to be a monstrous case.

I know from past experience that there are some cases that may be even too big for normal litigation. You may have to design a model to put that under or to handle it.

But somebody in a high place will be on top of that.

I do not think there would be anything improper for me to say to the Deputy or the Solicitor General, "I want you to look into that. I cannot participate in it. I do not want to have anything to do with any judgments that are made, but I want you to take it under control." I might do that.

Senator MATHIAS. I have one other question.

The Labor Department is in the process of drafting regulations that would make, subject to the nondiscrimination provisions of Federal law which relate to firms doing business with the Government, the practice which is common in some businesses of paying initiation fees and dues and other expenses incurred in private clubs which discriminate against blacks, Jews, women, or other groups, so that not all of the employees or the officers of that business are eligible to join.

My present information is that the Justice Department has interposed objections to these regulations of the Labor Department. I am not asking you to get deeply into the details, but tell us, if you can, how you would stand generally on whether the Federal Government ought to try to discourage the business practices of developing a business expense represented by paying dues and initiation fees in discriminatory private clubs?

Judge BELL. I would think—I have not seen this, but I would think that if it goes no further than saying that this is not an allowable cost, then that would be legal and proper.

If it says: We cannot award a contract to anyone who is in a private club, whose officers are members of a private club. I would not think it would go that far. If they do, that will be properly the subject of litigation and would involve the freedom of association under the Constitution.

Senator MATHIAS. What about the middle ground, however, where if the contract were awarded by the Government to a business which did make such charges, whether or not any part of those charges could be charged as the cost of doing business—

Judge BELL. I think the Government would have the right to say that you could not charge these things and that they would not allow these as part of the cost of this contract. That sounds reasonable to me, to do that.

Senator MATHIAS. That is my understanding.

Judge BELL. I will look at that. That sounds reasonable to me.

You know. I read somewhere the other day that the IRS was thinking of not allowing a deduction for any dues paid in a club that practices discrimination.

Senator MATHIAS. That would be my reaction to it. You ought not to load onto the cost of a Government contract as some kind of administrative expense the dues in a discriminatory club. That adds insult to injury as far as the American people are concerned.

Judge BELL. That is the point of the *Biscayne Bay Club* case. If you get something from the Government and if the Government is paying it, are they letting you have a tax deduction for it and then you have

the nexus with the Government. You get away there from being a private club at that point. That is the point of it.

I can see that that is the direction that things are going.

Senator MATHIAS. The Labor Department proposal was to bar Federal contractors from paying their employees' dues in private organizations that discriminate membership on the basis of race, color, religion, sex, or national origin.

The Department is quoted as saying that:

In some circumstances the payment of dues to private groups which limits membership on the basis of race, color, religion, sex, or national background may violate the executive order of the regulations. In other circumstances such employment may be entirely proper and not result in prescribed discrimination.

I do think it is a matter that I urge you to look into.

Judge BELL. That is another matter to be looked into.

Senator MATHIAS. I am sure this committee, with its responsibilities in these areas, will be very much interested in that ultimate action of the Justice Department in that matter.

Senator RIEGLE. Is that all, Mr. Mathias?

Any more questions?

Senator CHAFEE. I want to join in thanking Judge Bell for coming back today. I think it is getting close to the end.

Senator RIEGLE. I am wondering if you have any other items that you would want to comment on in passing at this point.

Judge BELL. I would like to thank the committee.

I think the hearings have been constructive. I think it has been good for the country. I am sorry that the television stopped.

I had two black lawyers who came up to me Thursday and said that they had been enjoying Judge Bell's school on constitutional law and race relations. I thought that was very good. [Laughter.]

The only thing that has not been covered today, which I thought might come up, is this. I think I should say something about it. This is the controversy that started over the FBI last week after my testimony.

I want to read into the record a press release that I gave Friday. I will make one short statement.

On Friday I gave out this press release. I answered no questions in connection with it. This is it:

At no time have I stated that Clarence Kelly would be "fired" as Director of the FBI. He is not being fired.

Continual referral to Mr. Kelly's being fired is unfair to a man who has given his life to public service.

I intend to counsel with Mr. Kelly with respect to whoever may be considered for the position of Director. I do not know when this decision will be made, but it will be orderly and in the best interest of the country and the FBI.

I am confident that Mr. Kelly will assist in any transition.

I would like to add to that that I have studied the legislative history of the 10-year tenure legislation for the FBI Director. Mr. Kelly has been there 3 years.

I would like to say on the record that I do not intend in any way to subvert this law.

As I understand it, the President has the power to act to remove the Director.

The purpose of the legislation was to be certain that the FBI Director would not be removed for political reasons or that he would not

be removed just because we have a new Government coming in. This is a political reason, of course.

I agree with that. I am planning to see that those things do not happen.

I have the legislative history before me. I want to cite from Congressional Record, Senate bill 12437, dated July 26, 1976, page F12439, quoting from the hearings of March 18, 1974.

Senator Byrd from West Virginia said:

The FBI Director is a highly placed figure in the executive branch and he can be removed by the President any time and for any reason that the President sees fit. This bill does not change that, but it does make it clear that the Congress does not want any President to use the seat of the FBI Director as he may those of his Cabinet officers in playing games of musical chairs. The 10-year term carried in this bill is intended to stabilize the office of the FBI Director from political influence, but it cannot, does not, intend to encase the occupant of that position in a fallout shelter from the standpoint of appointment and reappointment.

I simply want to say that I understand the intent of the Congress in this matter.

Given time, all of this will work out. I would be the last one, as the Attorney General, to in any way disparage, subvert, or undermine a statute in my handling of this matter.

Senator RIEGLE. Before I yield to Mr. Heinz, let me address one question to you myself.

We have covered a broad range of policy questions in the time that you have been here. I have been present most of the hearing, but we had a couple of votes the other day that required me to be away, and some of the other members as well.

Have you stated for the record any position at all on the possible decriminalization of the private use of marihuana?

Judge BELL. I think I did. I think I said I did not think the Federal Government had the resource to enforce any policy on enforcement of the law involving small quantities of marihuana. I would prefer to leave those matters to the States for handling.

As you know, a lot of the States are decriminalizing less than 5 grams or one cigarette, whatever it is, of marihuana.

I addressed that. That is my position.

I think the Federal Government and the use of its law enforcement resources should better be directed——

Senator RIEGLE. In other areas?

Judge BELL. Particularly pushers and suppliers.

Senator RIEGLE. Mr. Heinz?

Senator HEINZ. Since we discussed a few moments ago the semi-annual public report of extra judicial income and the canons of legal ethics, I am advised that the code of ethics that we are referring to was first adopted by the American Bar Association on August 16, 1972 and then adopted by the Judicial Conference in the spring of 1973.

It is that code of ethics which does indicate that if the value of an honorary or complimentary membership exceeds \$100 it must be reported as a gift on the semiannual public report of extra judicial income.

In view of the fact that I believe you said you had not reported the value of any such membership prior to 1975, I think it would be help-

ful to have for the record of the committee your public reports entered into the record of the committee.

Since it does appear that you did not fully comply with the canons of judicial ethics adopted by the Judicial Conference in spring of 1973, at least it appears that way based on my understanding of what you have told me, I would wonder if you would have any comment you would like to make at this point?

Judge BELL. What were you reading from?

Senator HEINZ. I am reading from a book entitled, "Reporter's Notes to Code of Judicial Conduct."

Judge BELL. American Bar Association?

Senator HEINZ. Yes; American Bar.

I am advised that that was adopted by the American Bar on August 16, 1972 and subsequently adopted by the Judicial Conference in the spring of 1973. I do not have the exact date.

Clearly, at least 2 years elapsed between 1973 and 1975.

Judge BELL. Senator Heinz, as far as I know, there is no way and nothing that the American Bar Association can do about making Federal judges report.

The Judicial Conference of the United States, shortly after the Fortas affair, adopted a reporting requirement where you file these reports twice a year.

The first I ever heard about the private clubs was when this committee of Federal judges which you referred to in 1975—that is the first I heard of it. They made the ruling, and I filed the report in January, just about the time I was leaving the court. I did not report the private club as an outside income, either one.

I was a member, as I say, of the Fort Worth Club. I was an honorary member of the Atlanta Country Club. I am not there any more. I was a member of the Atlanta Athletic Club. I think at one time I was an honorary member there. I rarely went there.

As for the Capital City Club and the Driving Club, they would have been worth more than \$100.

Senator HEINZ. Judge, in fairness to you, let me read what Canon No. 5(c)4 says:

Neither a judge nor a member of his family residing in his household should accept a gift, bequest, favor, or loan from anyone except as follows:

And then there is a small "a" and a small "b." It seems to me the pertinent is small "c," which is as follows:

A judge or a member of his family residing in his household may accept any other gift, bequest, favor, or loan only if the donor is not a party or other person whose interest have come or are likely to come before him, and if its value exceeds \$100, the judge reports it in the same manner as he reports compensation in Canon 6(c).

You may not have been aware of the fine print.

Judge BELL. I do not know if I was or not.

As a Federal judge, I will tell you now that I never considered that the American Bar Association was regulating me. I am subject to the——

Senator HEINZ. I understand that. I am sensitive to that. I agree with you.

Chairman EASTLAND. Senator Heinz, let him answer.

Judge BELL. I am subject to the Judicial Conference to the extent that I am willing to comply. Some judges have refused to comply with the Judicial Conference and never filed anything at all.

I filed—I know one time I was 1 day late and they wrote it up in the New Orleans newspaper. At least I was willing to file.

All I can tell you is from the time I knew of this—I do not know what date it was, you read from something in 1975. I filed one report about the time, maybe a month before, I was leaving the Court after I had resigned. I did not report it. That is all I can say about that.

Senator HEINZ. Judge Bell, so that we are mutually clear, these particular canons were subsequently adopted by the Judicial Conference of the United States in April 1973. They were apparently composed by the American Bar Association, the American Bar Foundation, but the Judicial Conference, presumably after years of work reviewing them, did decide to adopt them in April of 1973.

The only thing I am asking at this time is to make available to the committee, as part of the record, any report that you did file.

Judge BELL. I will be delighted to give a copy of every report I have ever filed.

Senator HEINZ. That was my request.

Judge BELL. I will be delighted; I will have them mail them to you today.

Senator RIEGLE. That will be inserted in the record at this point. Senator Bayh, did you want to be recognized?

Senator BAYH. I owe the committee a word of apology. This is one of those days where I needed mirrors to fulfill all of my responsibilities.

As a member of the Senate Intelligence Subcommittee, I was over there for the Sorensen hearing.

I thought since I had had the chance to question the judge, that being here would sort of be duplicating what I had done. I have talked to staff and I understand that the questions I might have asked have already been asked.

Chairman EASTLAND. At this point a rebuttal statement by Beverly C. Moore, Jr., director, Citizens for Class Action Lawsuits, will be made a part of the record.

[The statement referred to follows.]

REBUTTAL STATEMENT OF BEVERLY C. MOORE, JR., DIRECTOR, CITIZENS FOR CLASS ACTION LAWSUITS

I.

We address here certain oral statements made by Mr. Bell in response to a question posed by Senator Bayh.¹ Portions of Mr. Bell's answer apparently refer to our written testimony criticizing his views on the subject of class action lawsuits—we assume he refers to us since we are unaware of any others who have voiced the same criticisms. In particular, Mr. Bell responded to our criticism of his proposal for "opt-in" class actions as follows:

I think that is widely misunderstood because it is probably misunderstood by people who do not understand the class action procedure.

This statement appears to be a personal insult to the knowledgeability of the Director of this organization. While it is distasteful that I must say so, I happen to be a recognized authority on the subject of class actions. I frequently speak

¹ Hearing transcript, January 12, 1977, at 54-57.

at legal and academic symposia on class actions. I personally write, edit, and publish Class Action Reports, a legal periodical which comprehensively describes and analyzes class action cases and issues in all areas of the law. In that capacity I read every known class action decision. In short, I know what I am talking about, especially concerning the crippling effect that Mr. Bell's opt-in proposal would have on the efficacy of the class action device. What is most unfortunate about Mr. Bell's arrogant dismissal of critics as know-nothings—an attitude many hoped had died with a previous Administration—is that the remainder of his response to Senator Bayh's question tends to indicate that it is he, Mr. Bell, who does not "understand the class action procedure."

He stated, for example: "Most class actions go out. That is through failure of the District Court to cretify the case as a class action." That statement is simply not true. In a majority of cases class actions are permitted by district courts. The exact proportion of class actions allowed depends of course on the type of case. In the securities area, more than two out of three cases in which the question is reached result in the certification of some class, and the proportion rises to three out of four if uncontested class certifications for settlement purposes are included. Though there is no precise count in the employment discrimination area with which Judge Bell presumably was most familiar, Title VII suits are probably allowed to proceed as class actions more frequently than any other type of case. In the antitrust area classes are rarely allowed in monopolization cases² or in cases alleging tying arrangements or other distribution restraints,³ but price fixing cases have in recent years almost invariably been certified as class actions, even where class members run into the millions.⁴

In explaining why "most class actions" are rejected by district courts, Mr. Bell stated: "They do it on manageability. The court will conclude that the case is not manageable." This also is a clearly erroneous statement. As pointed out in our written testimony, at least in the securities area only about a third of the cases in which class status has been denied even reached the manageability or common question predominance issues. While, again, no precise counts of reasons for class denials in other areas are yet available, the same general pattern exists. The most frequent single reason for class denials is that the named plaintiffs do not turn out to be the nearly perfect class representatives that many district judges require. And the most important reason for that is that the so-called canons of ethics of the American Bar Association, which the Justice Department is currently challenging on antitrust grounds, prohibit attorneys from soliciting such "perfect" class representatives as clients. The fewer the acceptable class representative clients, the fewer class suits courts must entertain and the less frequently wrongdoers are held accountable in damages.

In any event, Mr. Bell went on to illustrate the manageability problem with a case "where the Ninth Circuit decided it would take 242 years to try the case if they gave every plaintiff ten minutes apiece to prove his damages." This reference is to the outrageous and widely criticized *In re Hotel Telephone Charges* decision.⁵ In that case 47 hotel chains (600 hotels) allegedly conspired to add a one to three percent surcharge for telephone services, fraudulently labeled as a tax or miscellaneous charge to the bills of some 40 million hotel guests. The average overcharge, it was claimed, was about \$6 per person.

Interestingly, prior to the Ninth Circuit's reversal of the district court decision allowing this class action, some of the defendant hotels settled their cases. It did not take any 242 years to apportion those funds among the individual members of the class. Nor was it necessary to hold a single hearing to determine

² See, e.g., *In re Transit Tire Co. Antitrust Litigation*, 1975 Trade Cases ¶60,144 (W.D. Mo.). But see *Windham v. American Brands, Inc.*, 539 F.2d 1016 (4th Cir. 1976).

³ E.g., *Ungar v. Dunkin' Donuts of America, Inc.*, 531 F.2d 1211 (3d Cir. 1976).

⁴ E.g., *State of West Virginia v. Chas. Pfizer & Co.*, 440 F.2d 1079 (2d Cir. 1971) (settlement); *In re Antibiotics Antitrust Actions*, 333 F. Supp. 278 (S.D.N.Y. 1971); *In re Arizona Dairy Products Litigation*, 1975-2 Trade Cases ¶60,395, ¶60,555 (D. Ariz.); *In re Arizona Bakery Products Litigation*, 1976-2 Trade Cases ¶61,120 (D. Ariz.); *In re Sugar Industry Antitrust Litigation—Western Cases*, MDL No. 201 (N.D. Cal. May 20, 1976); *Appleton Electric Co. v. Advance-United Expressways*, 494 F.2d 126 (7th Cir. 1974).

⁵ 500 F.2d 86 (9th Cir. 1974). The Ninth Circuit has a reputation for hostility to class actions. See *Kline v. Coldwell, Banker & Co.*, 508 F.2d 226 (9th Cir. 1974), criticized at 4 Class Action Rep. 2 (1975); *Kamm v. California City Development Co.*, 509 F.2d 205 (9th Cir. 1975), criticized at 4 Class Action Rep. 118 (1975); *McDonnell-Douglas Corp. v. United States District Court*, 523 F.2d 1083 (9th Cir. 1975), criticized at 4 Class Action Rep. 420, 423-424 (1975). But see *Blackie v. Barrack*, 524 F.2d 891 (9th Cir. 1975).

how much a particular person was due. Just as the aggregate amount of the class settlement fund was determined on the basis of a mathematical overcharge formula applied to the dollar volume of the hotels' billings, the distribution process utilized the hotels' own records containing the names and addresses of guests and their individual billings.

Yet the Ninth Circuit considered this case unmanageable, not because it actually was, but because of the peculiar requirement, endorsed by Judge Bell in *Pettway*, that damages must ultimately be proven and defended on an individual basis. A classwide assessment of aggregate damages based upon statistical, sampling, or other reasonable estimating techniques, the Ninth Circuit thought, would introduce some degree of imprecision as to whether the exactly right people got the exactly right amounts. This "deficiency", if it can be called that in light of the alternative of no one being able to recover, was equated by the Ninth Circuit with a denial of the defendants' constitutional rights not to have their property taken from them without due process of law.

It is not easy to imagine how this could be so.⁶ The defendants' total liability would have been exactly the same whether (a) every one of the 40 million class members was brought into court to prove their claims individually (assuming that were possible); (b) damages were computed mathematically and distributed to individual class members through the names and addresses of hotel guests in the defendants' possession; (c) the aggregate class damage fund was used, through what is called the "fluid recovery", to reduce hotel charges for some future period, during which at least those overcharged class members who again required the services of a hotel would receive some compensation though other guests who had not stayed in hotels during the conspiracy period would receive windfalls; or (d) the undistributable portion of the aggregate damage fund simply escheated to the state, a procedure authorized by the recently promulgated Uniform Class Actions Act and by the Antitrust Parens Patriae Act which became law last year.

So when Mr. Bell stated that "[i]t is not helping anybody to file a class action that is so big that it cannot survive in court", he evaded perhaps the central point raised in our written testimony. None of the big class actions that have been ruled unmanageable⁷ would have met that fate if procedures (b), and especially (c) and (d), were permitted by federal judges who, including Judge Bell, sometimes demand procedure (a). In short, "unmanageability" is usually the product of judicially conceived individualized procedures which have no logical justification.

Mr. Bell testified that "[i]f you opt-in, you cut down the class", thus avoiding the manageability problems of establishing liability or damage impact for each class member under procedure (a) and of computing and distributing damages to large numbers of individuals under procedure (b). But "cutting down the class" is precisely what we find most objectionable about his views. To cut down the class is, by definition, to hold the defendant accountable for less than the class harm perpetrated. This, in turn, emasculates the deterrence and cost internalization functions of class damage recoveries that should be the fundamental objective of any effective legal system. As we have previously observed, defendants' class liabilities are already substantially diminished by the requirement, under procedure (a) or (b), that each class member must ultimately opt-in by filing a claim for his share of the damages.

If there is any need (which there is not) to limit the sizes of classes allowed in order to make class suits manageable, that need has already been met by this "ultimate" opt-in requirement. Mr. Bell apparently believes—now for reasons of manageability but in his *Miller* decision so that every individual class member could "affirmatively employ counsel"—that the sizes of classes (and of defendants' liabilities) should be further reduced by requiring each class member to opt-in twice—once in the beginning of the suit when the class is certified and again after there has been a damage recovery.

Here Mr. Bell again misperceives the nature of the class action process. Manageability has little to do with the number of class members per se. Cases have

⁶ See generally Note, "Managing the Large Class Action: *Eisen v. Carlisle & Jacquelin*," 87 Harv. L. Rev. 426, 446-457 (1973).

⁷ E.g., *Eisen v. Carlisle & Jacquelin*, 479 F.2d 1005 (2d Cir. 1973); *Philadelphia v. American Oil Co.*, 53 F.R.D. 45 (D.N.J. 1971); *Ralston v. Volkswagenwerk, A. G.*, 61 F.R.D. 427 (W.D. Mo. 1973); *Boshes v. General Motors Corp.*, 59 F.R.D. 589 (N.D. Ill. 1973); see *Holland v. Goodyear Tire & Rubber Co.*, 1975-2 Trade Cases ¶60,522 (N.D. Ohio).

been ruled unmanageable which involved only a few hundred potential class members,⁸ while other cases have been managed even with tens of millions of potential claimants.⁹ Manageability usually turns upon whether important questions regarding liability can be adjudicated on a classwide rather than an individual basis,¹⁰ and any need for individual liability determinations would practically vanish if the fluid recovery/aggregate class damage remedies were available as described in procedures (c) and (d) above.

With the exception of the Hotel case and a few others,¹¹ courts rarely rule that problems associated with computing and distributing individual damages alone cause the case to be unmanageable.¹² Moreover, the process of determining and distributing individual damage awards need not require great attention from the judge himself, since these matters are ordinarily handled by the attorneys or, where hearings are required, by special masters. There would rarely be any need for hearings even in employment discrimination class actions if the "reasonable formula"¹³ or "average damages" approach rejected by Judge Bell in *Pettway* were universally accepted.

We note in passing Mr. Bell's further suggestion that his opt-in proposal, by cutting down the class, "also cures a lot of the problems of notice in the Eisen case". That, too, is inaccurate. Under the opt-in procedure personal notice to all individual class members who are identifiable with reasonable effort would become even more necessary, because it is this notice that would apprise the potential class members of their opportunity to opt-in. Indeed, what is so silly about the Eisen notice requirement, and its attendant expense, is that most class members receiving the notice merely deposit it in the nearest trash can unless they desire to opt-out of the litigation—a futile gesture where individual claims are not of sufficient magnitude to justify the cost of prosecuting independent nonclass suits. (While on this subject, however, we wish to emphasize in the strongest terms that the Supreme Court's Eisen and Zahn decisions are not, as is widely thought, among the important obstacles to effective class action remedies.)

Finally, it appears that Mr. Bell has modified the opt-in proposal made in both the Pound Task Force Report and in his Miller decision. He no longer favors "what a lot of people favor—that is, to make every class action an opt-in". To be more accurate, he should have referred to "what a lot of class action defense attorneys favor", since every major proposal for this change has emanated primarily from such persons.¹⁴ But Mr. Bell, according to his testimony, would now make the opt-in requirement discretionary, depending upon whether the particular district judge considered such a procedure necessary to avoid manageability problems.

What would happen, we suggest, is that pro-class action judges (a minority) would rarely invoke this discretion, while judges who are hostile to class actions, or to a particular class action, or judges faced with heavy caseloads, would invoke the opt-in requirement frequently. Such decisions, because they involve the exercise of discretion by the trial judge who is most familiar with the nature and complexity of the case, would be virtually unreviewable on appeal. In fact, there is already far too much unreviewable discretion in the hands of trial judges on critical class certification and settlement approval issues.

⁸ E.g., *Al Barnet & Son, Inc., v. Outboard Marine Corp.*, 1974-2 Trade Cases ¶75,243 (D. Del.); Ungar, *supra* note 20.

⁹ See, e.g., cases cited note 21 *supra*. Not only have multimillion member classes been certified, but in at least one case nearly a million ordinary consumers filed claims for over 3 million household purchasers of antibiotics and got their money back. See Lebedeff, "Operation Money Back," 4 Class Action Rep. 147 (1975).

¹⁰ See, e.g., cases cited note 25 *supra*. See also *Yandle v. PPG Industries, Inc.*, 65 F.R.D. 566 (E.D. Tex. 1974), criticized at 4 Class Action Rep. 425 (1975).

¹¹ See cases cited note 24 *supra*.

¹² An emerging manageability problem in some types of consumer credit class actions concerns the need to reconstruct or otherwise investigate the account histories of all class members to determine which transactions involved usurious interest charges or which credit purchases were for personal consumption rather than for business related purposes. See 4 Class Action Rep. 392-395 (1975).

¹³ See *In re Arizona Bakery Products Litigation*, 1976-2 Trade Cases ¶61,120 (D. Ariz.).

¹⁴ See "Authorities" cited note 10 *supra*. See also Simon, "Class Actions: Useful Tool or Engine of Destruction?" 55 F.R.D. 375 (1972); Report of the Comm. on Class Actions of the ABA Section on Corporation, Banking & Business Law, "Recommendations Regarding Consumer Class Actions for Monetary Relief," 29 Bus. Law. 957 (1974). But see Federal Courts Comm. of the Ass'n of the Bar of the City of N.Y., "Recommendations Regarding Absent Class Members and Proposed Opt-In Requirements," in *Current Problems in Federal Civil Practice* 711 (P.L.I. 1974).

More importantly, that the trial judge had discretion to require an opt-in or opt-out class action would certainly not escape the attention of potential perpetrators of class harms. The liability escape hatches available to these potential defendants are already numerous—whether a cause of action exists under which suit may be brought; whether an unsolicited plaintiff will initiate contact with a competent (and wealthy) class action attorney; whether the suit will be barred by the statute of limitations, sovereign immunity, individual “claims statutes”, or failure to exhaust administrative remedies; whether class status will be denied on grounds of standing, mootness, inadequate representation, atypicality, or some half-a-loaf relief obtained through a government proceeding; whether class status will be denied on manageability or common question predominance grounds because of the unavailability of the aggregate class damage remedy; and whether a substantial proportion of the liability will revert to the defendant through the failure or inability of class members ultimately to opt-in by filing individual claims for damages. At each of these stages the probability cumulatively declines that the perpetrator of class harm will be successfully sued for the full magnitude of the injury. To clothe district judges with opt-in or opt-out discretion would merely add another liability loophole to the calculus of the rational wrongdoer in determining whether violating the law would be profitable.

II.

Having said the foregoing, we are nevertheless gratified that in response to Senator Bayh's question, Mr. Bell went on to endorse the enactment of new consumer class action legislation:

“Congress could legislate on that. It might be worth doing to help to give people access to the courts. Most of these consumer suits are coming under a special statute where the court has jurisdiction anyway. There are some problems in this area but they are not great. The greatest, I think, is on bringing a lawsuit that is of the size that it can be processed through the courts within reasonable time. If we take that as our target or our goal, work toward that, we will help a lot of people.”

Our problem is that we remain unclear as to what Mr. Bell really means. It would do relatively little good simply to enact a statute creating a private cause of action in the federal courts for various types of consumer fraud and marketplace deception, even if the statute included references to “class actions” and modified the Eisen notice requirement. For the independently applicable requirements of Rule 23, as interpreted and applied by judges like Judge Bell, including the requirement for the “right plaintiffs” and, most importantly, the unavailability of a legislated aggregate class damage remedy, would probably result in a very substantial proportion of such consumer class actions being denied class status. And in those that were granted class status, as is true with currently available class remedies, only a fraction of the actual class damages would be recovered by individuals ultimately opting-in.

We do not perceive that Mr. Bell has recognized, or even seriously considered, that these are the central problems which must be addressed by any class action legislation that is to be effectively enforced by private and/or public attorneys general. It may be that the type of class actions that he envisions “will help a lot of people”—i.e., compensate people for millions out of billions of deceptions and overcharges which have already occurred. Our question is whether his type of class action will prevent or minimize the overcharges from occurring at all.

Our society is at a crossroads. Throughout every department of government is scattered a maze of agencies, each having one or more regulatory functions aimed at minimizing the imperfections and harmful side effects of a free market economic system which, if it did not also generate these problems, would rival obtainable perfection. We refer here to the major diseases (e.g., diet, cigarettes, occupational exposures, adverse reactions to prescription drugs), accidents (e.g., automobiles, consumer products, industrial hazards), pollution, congestion, market power and economic concentration, fraud and deception, and discrimination.¹⁵

¹⁵ Of course, the government itself has exacerbated or generated many of these ills—through the Interstate Commerce Commission, Federal Communications Commission, Civil Aeronautics Board, Federal Maritime Commission; antitrust exemptions for the insurance, professional sports, newspaper and other industries, as well as for labor unions and agricultural coops; import barriers; professional licensure; zoning ordinances; crop subsidies and acreage restrictions in agriculture, plus many billions of dollars of subsidies to other industries.

On this road that we have traveled as a nation, the courts have generally taken a back seat, relegated to adjudicating discrete disputes between formal parties and, if any single area of judicial concentration is to be singled out, to serving as a forum in which various business and other powerful interests can protect their "rights", legitimate or not. Meanwhile, the average citizen has been forced to trust the bureaucracy to safeguard his or her rights to health, safety, and maximum economic welfare.

While the regulatory apparatus comes in many forms, two major characteristics emerge. The first is that the agency's approach is ad hoc rather than profit incentive/disincentive. Rather than relying upon the greed and ambition of the entrepreneur as the fuel to speed achievement of the agency's objectives (if it long remains true to them), the agency itself makes many of the technological decisions as to how those goals are to be accomplished. Sometimes the agency does this through performance standards, as in the OSHA parts per million limits on exposures to harmful occupational chemicals or in the FDA standards for the number of rodent hairs tolerable in a Hersey Bar. In other areas the agency dictates the solutions directly, as in the case of whether air bags are to be required on new automobiles or whether, if X is said in a food advertisement, Y must also be said.

Where these standards and direct decisions are not arbitrary or inflexible, they are frequently either too weak or (occasionally) too rigorous to be cost effective. More fundamentally, government bureaucrats have never been known for their proficiency in developing and implementing new technologies or marketing concepts for safer or more honestly portrayed goods and services. That is primarily the function of the private sector, fueled by the profit motive and competition.

A second major characteristic of this regulatory maze is the absence of significant sanctions imposed upon violators of the standards. Lengthy court challenges delay implementation of the programs. Deadlines for compliance are constantly extended. Fines or penalties, when levied, are arbitrary or miniscule. Many agencies have no sanctions to impose, other than to seek a court injunction against future violations. Other agencies, borrowing the plea bargaining concept from the criminal justice system, balk at systematically imposing the full sanctions available. Citing inadequate resources to fully prosecute all violators, agencies opt for consent decrees and other forms of primarily prospective relief—and then wonder why the number of violators does not decline.

Are we to continue along this path—creating more agencies, more standards, more paperwork, more painless consent decrees? Or are we to embark upon a new approach—monitoring and measuring class harms, imposing full damage liabilities in every detected case, and thereby creating a profit incentive for firms to avoid or minimize these harms that is just as strong and effective as the profit incentive that has spurred the many technological achievements of which we are so justifiably proud?

Chairman EASTLAND. I will make a part of the record a letter to me from Senators Magnuson and Inouye and a response from Judge Bell.
[The material referred to follows:]

U.S. SENATE,
COMMITTEE ON COMMERCE,
Washington, D.C., January 10, 1977.

HON. JAMES O. EASTLAND,
Chairman, Committee on Judiciary, U.S. Senate,
Washington, D.C.

DEAR CHAIRMAN EASTLAND: Last April, as part of the National Tourism Policy Study which it is conducting pursuant to S. Res. 347 (93rd Congress), the Senate Commerce Committee held the first in a series of hearings on the facilitation of entry into the United States by aliens who wish to visit for business or pleasure.

Among the witnesses who appeared and testified was the Honorable Leonard F. Chapman, Jr., Commissioner, Immigration and Naturalization Service (INS).

General Chapman informed the Committee that the Administration's budget request for fiscal year 1977 for INS would necessitate a reduction of 133 persons in the Service's inspection force. Of that number, he testified that 74 were inspection officers and the remainder, clerical assistants.

He also told the Committee that this reduction would be taking place at a time when there were major increases in efforts to enter the United States illegally through the use of fraudulent documents; and when all indications were that the number of tourists entering the United States would continue its yearly increase of about one million people.

As a consequence, the problem of illegal aliens could well be exacerbated, and the length of time required to clear Immigration inspection could be lengthened, thus further impairing visitor facilitation at U.S. airports-of-entry.

Fortunately, Congress restored the cuts proposed by the Administration.

Regarding the problem of illegal aliens, we believe it is interesting to note the conclusions reached in a recent report of the Judiciary Committee of the House of Representatives which has investigated the matter for some years.

"Without question, the illegal alien problem has intensified in recent years in large part because of the inability of the Immigration and Naturalization Service to cope effectively with the situation. The Committee believes that the primary reason for INS' ineffectiveness is lack of available resources to meet the problem." (H. Rep. No. 94-566, 94th Cong. 2nd Sess; p. 5, (1976)).

"For several years, the Committee has been deeply concerned by the inadequate funding of the INS. The Committee believes that the lack of funds has greatly diminished the capacity of INS to properly and effectively administer the Immigration and Nationality Act. This problem can be traced directly to the failure of the Department of Justice and OMB to place sufficient priority on the enforcement of our immigration law. . . . More specifically, insufficient INS manpower, on occasion, has resulted in: curtailment of services to the public; release of apprehended illegal aliens; temporary suspension of enforcement activities; inadequate response to sensor alarms along the southwest border which indicate surreptitious entry of illegal aliens; and failure to investigate and locate overstay visitors." (Ibid, p. 18).

With respect to the adverse impact the proposed reduction in personnel would have had on international visitor facilitation, we can only note that such a result appears to contradict the policy of the Federal Government to encourage and promote travel to the United States from abroad, as embodied in the International Travel Act of 1961, as amended.

It also appeared to be contrary to the statement of National Transportation Policy announced by the Secretary of Transportation in 1975, i.e.:

"An important element of international transportation policy is 'facilitation', i.e., simplifying and expediting the international movement of passengers . . . through terminals. Facilitation saves time and money. We will work vigorously to simplify entry and departure clearance procedures for passengers . . . improved terminal layout and baggage . . . handling facilities and standardize documentation requirements for carriers. . . . We will exploit fully electronic data processing techniques in order to eliminate most documents and improve passenger processing, ticketing, baggage control and fare and rate determination."

Most recently, as reported in the Washington Post (January 17, 1977), the President's Domestic Council Committee on Illegal Aliens reported that illegal aliens have become so numerous that those apprehended annually are almost double the number of foreign citizens entering the United States legally.

The report concludes that, "it is vastly more desirable from both a policy and resources standpoint to prevent entry of the illegal before arrival than to locate and apprehend the illegal once he is in the United States."

But to do this successfully, the report says, it will be necessary to provide the Immigration Service and the State Department with greater resources and to establish better cooperation internally between federal agencies with immigration responsibilities and externally with foreign governments.

In our judgment, therefore, the proposed reduction in personnel proposed by the Administration's budget for fiscal year 1977 would not only have undercut the purpose of the Immigration and Nationality Act, it would have frustrated the policies of the United States enunciated in the International Travel Act of 1961, and the 1975 statement of National Transportation Policy. It would also have been manifestly unwise in view of the recent report.

Your Committee will shortly be holding confirmation hearings on Circuit Judge Griffin B. Bell to be Attorney General of the United States. At these hearings we respectfully request that a copy of this letter be submitted to Judge Bell, and that he be requested to comment on it for the record.

Sincerely yours,

WARREN G. MAGNUSON,
Chairman, Senate Commerce Committee.

Aloha,

DANIEL K. INOUE,
*Chairman, Subcommittee on
Foreign Commerce and Tourism.*

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C., January 14, 1977.

Senator JAMES O. EASTLAND,

Chairman, Senate Judiciary Committee, New Senate Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: I have been provided with a copy of the letter to you from Senators Magnuson and Inouye which includes a request for my comment. I share the concern which Senators Magnuson and Inouye express therein about the need for effective enforcement of the immigration laws.

The Immigration and Naturalization Service must be given sufficient funding to deal effectively and humanely with the illegal alien problem which was noted in the recent report by the House Judiciary Committee. Likewise, INS must have adequate resources to facilitate international visitations to the United States. As part of designing an approach to both of these problems, it will be necessary to foster better cooperation between the Justice Department and other federal agencies with immigration responsibilities and between the United States government and the governments of other nations.

As part of an overall review of INS, I will give careful study to the funding levels necessary for effective enforcement of the immigration laws and effective implementation of United States policy to promote travel from abroad.

I look forward to working with Senators Magnuson, Inouye, and others in devising means of dealing with these important problems.

Sincerely,

GRIFFIN B. BELL.

Chairman EASTLAND. We will go over until the call of the Chair.
[Whereupon, at 12:15 p.m., the committee recessed.]

NOMINATION OF GRIFFIN B. BELL

TUESDAY, JANUARY 18, 1977

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to recess, at 2:20 p.m., in room 2228, Dirksen Senate Office Building, Senator James O. Eastland, chairman, presiding.

Present: Senators Eastland, McClellan, Kennedy, Bayh, Burdick, Abourezk, Reigle, Sasser, Thurmond, Mathias, Scott, and Heinz.

Also present: Francis C. Rosenberger, chief counsel, and J. C. Argetsinger, David Dixon, and Britt Singletary, of the committee staff.

Chairman EASTLAND. The committee will come to order.

Gentlemen, I would like permission, when the nomination comes up from President-elect Carter, to be instructed to report the nomination to the Senate.

Senator MATHIAS. Mr. Chairman, your request raises the question of the other witnesses who have sought to testify before the committee.

One with which I think you are familiar, Mr. Aaron Henry: Mr. Putnam, Mrs. Willie Ruth Smith, Mr. Hudie McDowell, Volma Overton, and Laverne Royal, these witnesses have indicated that they want to testify and that they feel they are responding to the request of the committee. Committee members raised the questions of where there were objections to this nomination.

I cannot advise the committee as to what they will testify to, but I do feel that in light of the fact that the committee itself put out the call for further witnesses, and that these people in some cases, I am told, are actually in motion and trying to travel to Washington—

Chairman EASTLAND. Yes, that is like the one witness who telegraphed me on yesterday that he was in town, and that he wanted to testify. They said they could reach him at some hotel. Well, I authorized someone to call this witness. He was not at the hotel, but still down in my State.

Everybody who wanted to testify has had that opportunity. They have been given 7-day notice in the Congressional Record. We have heard everybody who wanted to testify. I think this is nothing but a delaying tactic. I feel that the time has come to decide the issue one way or another.

Senator THURMOND. If I might make a statement, Mr. Chairman. I have carefully reviewed the record of Judge Griffin Bell as a Federal judge, as a lawyer, and as a man.

In addition to my review, I have had the benefit of the views of his critics and supporters who have seen fit to comment on his nomination. My evaluation leads me to conclude that Judge Bell will make an able Attorney General of the United States.

One of Judge Bell's strong points is that he is a skillful negotiator. Settlement of legal disputes by negotiation rather than by litigation is a worthy goal—a goal, I am sure, that Judge Bell will continue to pursue.

As Attorney General with his knowledge and experience, Judge Bell will do much to give some relief to the heavy dockets of our courts.

The record of Judge Bell also marks him as an independent thinker and a man of high integrity. Almost all of those who know him best say that he is sensitive to and concerned with individual rights.

I am convinced that he will do a good job for our country as U.S. Attorney General.

I am happy today to move that Judge Griffin Bell be confirmed by this committee to be Attorney General of the United States.

Chairman EASTLAND. That is not the proper motion. The proper motion should be—

Senator THURMOND. I will just submit this at this time.

Chairman EASTLAND. The proper motion is that the chairman be authorized to report the nomination to the full Senate.

Senator THURMOND. I make that motion.

Senator MATHIAS. If the Senator from South Carolina will withhold that motion until we dispose of our discussion.

Senator THURMOND. I shall; surely.

Senator MATHIAS. I would move that the committee hold 1 additional day of hearings; that it hear the witnesses the chairman is advised want to testify; that we meet at 4 o'clock tomorrow afternoon on the question of authorizing the chairman to report out the nomination.

Chairman EASTLAND. It will accomplish nothing.

Senator BURDICK. If the Senator will yield. I did not attend all the hearings, but I did attend some of them. There was a good deal of repetition in what I heard.

You just stated that you do not know what these witnesses will testify to.

Senator MATHIAS. I am very frank about that.

Senator BURDICK. You do not know whether it is repetition or what it is. If I had some idea as to what they would testify to which had a bearing on the nomination I would support you.

I do not know what it will be other than repetition, and as long as that is the case I could not support you.

Senator MATHIAS. I want to be frank. I am not able to represent to the committee it will be a blinding light on the road to Damascus. These are plaintiffs in cases who feel aggrieved.

Senator BURDICK. Those are the cases that Judge Bell responded to.

Senator MATHIAS. Yes, so they have some standing. They are not just people drifting in from the general public.

Senator BAYH. I have not had a chance to discuss this with the chairman or anybody else. I would like to see the Attorney General

of the United States function efficiently and competently and in a manner which has the full confidence of the American people.

My concern—the chairman may be absolutely right because we will not learn anything new—is the idea of perhaps just hearing and letting people know that we are willing to let everybody be heard before making a final determination, and that this could very well be very beneficial.

Chairman EASTLAND. We have done that.

Senator BAYH. Apparently there are two or three other people who do not share that feeling.

Chairman EASTLAND. That will always be the case.

Senator BAYH. I am not suggesting, and I do not remember the specific wording of the motion of the Senator from Maryland and I apologize for being late, but he asked that we permit a very short period of time to end this and permit people to have a chance to make their case. Nobody then can ever say to us or to the next Attorney General of the United States that: Something else would have happened differently if we had just had a chance to be heard.

Senator KENNEDY. It seems to me, Mr. Chairman, as one who asked one of the witnesses about what the reaction was within the local communities to various decisions which were being made by the nominee, and what the general attitude was among those who were being impacted by the decisions in the fifth circuit, and obviously in other parts of the country, that this request by the Senator from Maryland is an eminently fair and reasoned one.

I think all of us are very mindful that a President wants to get about the business of his responsibilities. We are all very mindful that Judge Bell is confident that he will be nominated and wants to assume those responsibilities at the earliest possible time.

It does not seem to me that this request is really delaying the process. We have had different times in the course of our history where we have had an acting Attorney General for a period of 7 months, Mr. Katzenbach.

I do not think, as important as many of the matters are within the Justice Department, that we are really delaying in any important way action on his nomination.

It seems to me that for the reasons that have been outlined here, both in terms of this whole process, the hearing process which I think this committee has taken a great deal more seriously in recent times than it perhaps has at other times, I think how the Senate will regard our final and ultimate recommendations, which I think is not unimportant, and the ability for any of us to justify and support our position, I feel that these other witnesses should be heard.

I do not think any member of this body can feel there has been any desire or will by any member of this group to seek any kind of delay.

Our hearings started very early and went very late. As one acquainted with hearings where the purpose has been delay, I think the questions being put, really without exception, were thoughtful and probing questions as well as questions which went both to the nominee and to the witnesses to strengthen the recommendation of this body.

I tend to support the resolution.

Chairman EASTLAND. What witnesses do you want to hear tomorrow?

Senator MATHIAS. Those I am aware of, Mr. Chairman, are those I read out a moment ago listed on this memorandum.

Chairman EASTLAND. How many do you have?

Senator MATHIAS. There are six.

Chairman EASTLAND. At what time do you want to meet tomorrow?

Senator KENNEDY. Nine o'clock?

Senator MATHIAS. Whenever the Chair decides.

Chairman EASTLAND. Very well. And the idea is that we decide on confirmation at 4 o'clock?

Senator MATHIAS. Or earlier if the witnesses are finished.

Senator McCLELLAN. We should set a time to vote as of a time certain.

Chairman EASTLAND. If I understood the motion it is 4 o'clock.

Senator MATHIAS. Yes; that was my motion, 4 o'clock.

Chairman EASTLAND. Is there objection?

Senator KENNEDY. I do not intend to object, and I want it understood that I shall not object. However, if there is any matter which comes up as a result of these hearings—I do not expect there will be—if there is any important kind of matter that comes up tomorrow, I think we want at least to be prepared—

Chairman EASTLAND. If an important matter came up we would have no trouble getting the committee to agree to put it over.

Senator KENNEDY. I have had trouble before getting this committee to agree to what I thought was an important matter. However, I think we should go by the will of this body, having mentioned my feeling.

Senator SCOTT. I do not feel a delay of one day will really make any real difference one way or the other.

I am a little concerned about a man who appears to be well qualified for this position, who is not actively seeking the position, and who appears to be willing to accept the position as a public service. This is something I feel all of us would like to have in all of the people who serve in the President's Cabinet.

I believe that if we extend this much longer we are almost harassing a man, and this is something I feel we should weigh—look to a man's qualifications and fitness to hold an office as we advise and consent. I do not feel we should get to the point where we are discouraging people from a public office.

I would hope that my friend from Maryland would agree with this sentiment.

Senator MATHIAS. I agree with the Senator from Virginia, and I feel if his nomination is to be confirmed action should be taken immediately so he can assume his duties on or immediately after the inauguration of the President.

Senator SCOTT. But we shall vote at 4 o'clock unless something of unusual nature should come into being?

Chairman EASTLAND. That is right.

Senator SCOTT. Then we would have unanimous consent to change it?

Senator MATHIAS. We will vote at 4 o'clock unless the committee agrees to change that time for a vote.

Chairman EASTLAND. That is correct.

Senator McCLELLAN. The committee can determine whether it carries out the unanimous consent agreement.

Senator THURMOND. I shall then withhold my motion until tomorrow afternoon at which time I shall renew it.

As I understand it now, the motion by Senator Mathias is to call any witnesses who wish to testify tomorrow and to have a vote at 4 o'clock tomorrow afternoon.

Is that correct, Senator Mathias?

Senator MATHIAS. That is correct.

Senator THURMOND. I second that motion.

Senator McCLELLAN. Can we have the names of the witnesses today?

Senator MATHIAS. These are the ones I requested. They are already in the record.

Senator KENNEDY. Is there anyone else? Can the staff tell us whether there have been others?

Mr. ROSENBERGER. The committee has received telegrams from only two of the people on Senator Mathias' list—Hudie McDowell, and Willie Ruth Smith. Both are plaintiffs in the Atlanta school desegregation case.

On Friday, at the close of the hearing, Clarence Mitchell said that he would like to have additional witnesses. The chairman instructed me to negotiate with him.

At that time Mr. Mitchell said he would like to have Jesse Jackson, of PUSH, in Chicago and plaintiffs from the *Calhoun* case, the *Cisneros* case, and the *Austin, Texas* case, but that it would be very difficult to get them here during the inaugural week because of transportation difficulties and so on.

On Monday I spoke to Mr. Mitchell again, and he said he had been able to get two plaintiffs in the Atlanta desegregation case, and subsequently we got telegrams from those two.

I do not have the names of any other plaintiffs in the three cases.

Subsequently I understood from the office of Senator Mathias that Mr. Jackson had withdrawn his request to testify.

We then also got a telegram from Aaron Henry, whom we tried to reach yesterday. They said he was en route to Washington. I understand he is en route today.

We had one other request from the Black Economic Development Conference, Inc., Philadelphia, Pa. I have tried to reach by telephone the person J. Claude Ross.

I was told today by someone who would not give me her name at the phone number on their letterhead that he could perhaps be reached after 4:30 this afternoon.

These are the only requests that the committee has received. I have names of only two plaintiffs.

Mr. Mitchell did say he also would like to get plaintiffs in the *Calhoun* case, the *Cisneros* case, and the *Austin, Texas* case.

Senator McCLELLAN. Have the witnesses themselves requested to be heard?

Mr. ROSENBERGER. The only plaintiffs we have heard from are two in the Atlanta case.

Senator McCLELLAN. I am talking about witnesses who have personally requested that they be heard. That is what I would like to know.

Mr. ROSENBERGER. Other than these two telegrams we have heard everybody who made a timely request.

Senator KENNEDY. Might I ask whether the witness list can be worked out between your staff and Senator Mathias. There have been some instances where telegrams have come to individual members rather than coming to the committee directly.

Chairman EASTLAND. Who are they?

Senator KENNEDY. They can work that out.

Senator MATHIAS. These the committee has, Mr. Chairman.

Senator KENNEDY. I want to indicate that I support this resolution. I do not want to be locked in if there are important matters which come up. I just want this decided by a majority of the committee and not by unanimous consent.

I have entirely good faith that these will be on relevant matters, but if a new issue or question comes up, frankly I do not want to be precluded from at least being able to raise the point.

Chairman EASTLAND. You are exactly right about that. A majority of the committee certainly should make the decision.

Senator KENNEDY. Senator Scott mentioned modifying it by consent agreement. I wanted the record clear.

Senator RIEGLE. The only thing that concerns me is that with the travel problems being what they are, being as late in the day as it is now, whatever is worked out in terms of witnesses, that witnesses get that notification as soon as possible today.

I perceive the possibility that by the time we reach them and they want to come and take a plane, they will say: We cannot get there before 4 o'clock tomorrow.

I move that we act as quickly as possible today.

Chairman EASTLAND. Mr. Rosenberger is instructed to get them on the telephone if possible.

All in favor say aye; opposed no.

The ayes have it. The motion is carried.

We will recess until tomorrow at 9 a.m.

[Whereupon, at 2:45 p.m., the committee recessed.]

NOMINATION OF GRIFFIN B. BELL

WEDNESDAY, JANUARY 19, 1977

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 9:15 a.m., in room 2228, Dirksen Senate Office Building, Senator Edward M. Kennedy, acting chairman, presiding.

Present: Senators Eastland, McClellan, Kennedy, Bayh, Burdick, Abourezk, Riegle, Sasser, Thurmond, Mathias, Scott, Chafee, and Heinz.

Also present: Francis C. Rosenberger, chief counsel, and J. C. Argetsinger, David Dixon, and Britt Singletary, of the committee staff.

Senator KENNEDY (acting chairman). The committee will come to order.

Our first witness is Aaron Henry of the NAACP. He is an old friend of mine. He has been very active in the civil rights movement for many years and very much involved in the life and activity of the State of Mississippi.

TESTIMONY OF AARON E. HENRY, PRESIDENT, MISSISSIPPI STATE CONFERENCE, NAACP

Mr. HENRY. Good morning, Senator Kennedy, and members of the Senate Judiciary Committee.

My name is Aaron Henry. I have served as president of a small branch——

Senator KENNEDY. Would you introduce your associate?

Mr. HENRY. Representative Robert Clarke from the Mississippi State Legislature.

Senator KENNEDY. Representative, we are happy to have you.

Mr. CLARKE. Thank you.

Mr. HENRY. I have been president of a small NAACP branch in Vahoma County, Miss., since 1953.

It was my privilege to become president of the Mississippi State Conference of NAACP in 1964. Ironically, that's about the same year that Mr. Griffin Bell became a member of the Fifth Circuit Court of Appeals.

That court of appeals had jurisdiction over the cases that NAACP in Mississippi brought to the fifth circuit in that regard.

I have been a member of the National Board of NAACP since 1964 and a member of the executive committee of that body, which has 17 persons who run the day-to-day activities of the NAACP nationwide.

A few days ago that body voted unanimously to oppose the nomination of Griffin Bell for the position of Attorney General of the United States. They were there from the North, South, East, and West, blacks and whites, males and females.

During my tenure of office with the NAACP, I have tried to help heal the wounds left upon my home community by the evils of racial bigotry.

I have worked with Senator Eastland from my home State who is the chairman of this committee, in trying to overcome the problems and the burdens that were present within the Democratic party of that State.

I have been a part of the struggle of voting rights, public accommodations, school desegregation. I have been a victim of the bombings, the jailings, and the violence of that era; and that is primarily why I am here today, because that is an era of our Nation's history that I do not wish to return to.

I have come to know many persons of my home area in the South, both black and white, and I would be proud to support many of them for the position of Attorney General of the United States.

Judge Johnson of Alabama, Judges Goldberg, Tuttle, and Wisdom—all of the fifth circuit—and there are some outstanding attorneys in our native part of the country: the Hollowells of Georgia, the Jordans of Texas, the Parkers and the Myers of Mississippi. This is just to name a few.

Furthermore, it has been, and still is, my proud privilege to be a loyal supporter of President-elect Jimmy Carter. I worked in his campaign. I have been a personal friend of the President-elect since 1972 during our era with the Democratic National Committee.

I simply feel that in this nomination of Judge Griffin Bell, that the President-elect has made an honest mistake. I feel that it is my duty as a citizen of my country to alert the Senate of the United States, the President-elect, and the people of America to what I feel are our problems with the upcoming possible appointment of Judge Griffin Bell to the position of Attorney General of the United States.

I will try to deal with the history of the gentleman in complete honesty, as I have known him, and as it has been my experience to be a member of many cases that have gone before the fifth circuit, carried by the NAACP of which Judge Bell has been a participant.

I will deal with him in, generally, three categories. I will deal with his judicial record. I will deal with, in addition to his judicial record, on the issues of school desegregation, employment discrimination, and with Judge Bell generally in the area of voting rights. And finally, as a human being.

In opposition to the nomination, we need to examine Judge Bell in terms of the business of the Justice Department and Attorney General, if he is nominated to head the department—the Department of Justice—of our Nation.

While some attorney generals in the past have more or less let the various divisions within their department run themselves, it is likely that Judge Bell will take an active interest, particularly in the activities of the civil rights division upon which he will attempt to press his own personal views.

As a fifth circuit court judge, Judge Bell was one of the swing judges on the fifth circuit in civil rights cases. Frequently this meant that he voted with the majority, whether they were for or against civil rights.

His record is remarkable in that I know of no case in which he wrote a pro civil rights dissent when the majority decided against the civil rights case.

We should be aware that those who support the nomination will be able to point to decisions in which he upheld civil rights claims, when that was the vote of the majority.

A case in point is *Toney v. White*, 1973, en banc, decided by the fifth circuit, 488 F. 2d 310. Judge Bell wrote the decision for the majority which overturned a panel decision and which ordered a special election to cure racial discrimination by the voting registrar in the primary. Dissents were written by the conservative wing of the court, including Judges Coleman, Gee, Clark, and Simpson.

In *Machesky v. Bizzell*, 414 F. 2d 282, fifth circuit 1969, Judge Bell wrote a strong opinion upholding the first amendment civil rights protest rights of demonstrators in the Greenwood, Miss., boycott case. He went so far as to hold that the district court should enjoin a State court injunction which banned any picketing or free speech activity associated with the boycott.

There are probably other similar decisions. I am trying to deal with them positively initially so that you will, hopefully, get the total spectrum of that which we are trying to deal with.

We will deal with him in his total operation as we have seen him on the fifth circuit—both the decisions he rendered that were good and those that he rendered that were bad.

Regardless of these decisions, what should concern us more are those instances in which he wrote a decision against or voted against civil rights claims.

An analysis of his written opinions alone may prove misleading. His votes as a fifth circuit judge are frequently just as important as the opinions he has written.

In the area of school desegregation, Judge Bell's public position is well known. He is against school desegregation if it involves—as it frequently does—busing.

In one of the landmark early cases, not involving busing, *United States v. Jefferson County School Board of Education*, 380 F. 2d 385, fifth circuit 1967, en banc, the majority of the fifth circuit handed down a strong opinion holding that school districts have an affirmative duty to bring about integrated, unitary systems, and upholding the HEW guidelines setting percentage requirements for school desegregation.

Judge Bell dissented, joining in a reactionary opinion written by Judge Gewin referring to “enforced integration,” and also writing one of his own in which he referred to “compelled integration” and “compulsory integration” and denounced the HEW guidelines as an interference with the personal liberty.

Although Judge Bell was in the minority on the *Jefferson County* case and the majority opinion became the law of the fifth circuit, he did not moderate his views over the years.

In *United States v. Austin*, 467 F. 2d 848, fifth circuit 1972, en banc, the fifth circuit reversed a district court decision rejecting the HEW proposals for school desegregation and ordered effective relief to convert to a unitary system.

The court particularly denounced the closing of all-black schools which put the burden of desegregation on black students and approved busing to achieve desegregation.

Judge Bell—joined by seven other judges—wrote a notorious special concurring opinion stating that the district court did not have an obligation to eliminate all one-race schools, and that busing should be minimized.

Judge Bell's opinion so outraged the liberal, procivil rights wing of the court that those judges took the unusual step of writing a separate opinion to denounce Judge Bell's special concurring opinion saying that:

It was written as if there were no records before the court and that it consists of abstract admonitions, most of them old-hat to this court, and so general as to be unrelated to the facts and the issues in the case.

The liberal judges called Judge Bell's view that there was no obligation to eliminate systemwide desegregation "destructive," and his language "blatant euphemisms to avoid desegregating the system, preserving the whiteness of certain schools."

Referring to Judge Bell's opinion, they wrote:

It is said that it marks a turning point for this court. It is the first backward step for a court that has labored mightily to follow faithfully the mandates of the Supreme Court and of Congress in the fields of civil rights.

That is strong language, indeed.

It is clear that the liberal, procivil rights judges on the fifth circuit—Judges Brown, Wisdom, and Goldberg—believe that Judge Bell does not have a strong commitment to civil rights and to the elimination of racial segregation. What is clear to them should be equally clear to us.

In short, Judge Bell has done all that a lower court judge could do and more than most have been able to do to circumscribe the remedial principles and the scope of public school desegregation.

Moving to employment discrimination, Judge Bell has taken an anticivil rights position on two of the major issues today in employment discrimination cases—affirmative remedies, quota hiring, and testing.

If the pervasive and systematic denial to blacks of equal job opportunities is ever to be overcome and if blacks are ever to achieve economic parity with whites in our society then some form of affirmative action is required in employment discrimination cases to remedy the present effects of past discrimination.

Injunctive relief which simply prohibits an employer from future discrimination, while it may open up job opportunities for future applicants, perpetuates the past exclusion of qualified black applicants.

The first fifth circuit case which took head on the issue of quota remedies in the Mississippi Highway Patrol employment discrimination case, *Morrow v. Crisler*, 491 F. 2d 1053, fifth circuit 1974, en banc. This disapproved the failure of the district to order some affirmative hiring relief and stated:

The District Court on remand may, within the bounds of discretion, order temporary one-to-one or one-to-two hiring the creation of hiring pools, or a freeze on white hiring, or any other form of affirmative hiring relief until the Patrol is effectively integrated.

Although Judge Bell did not write a separate opinion, he joined in a special concurring opinion written by a Nixon appointee, Judge Roney, which denounced the fifth circuit's approval of a temporary hiring quota or hiring goals.

Most written employment tests discriminate against blacks in that in almost every case, for cultural reasons, a higher percentage of white applicants pass written tests than black applicants, regardless of objective qualifications to perform the job.

The question in these cases is: What must the employer show to allow him to continue to use these tests?

The EEOC in its Guidelines on Employee Selection Procedures has developed strict standards. To use a test an employer must show a high correlation between high test scores and successful job performance.

In other words, a strict showing is required that the test is, in fact, job related.

Recently, the Justice Department, for purposes of administering LEAA grants, the Civil Service Commission, and the Department of Labor have issued their own testing guidelines which are considerably weaker on the issue of test validation than the EEOC's guidelines. And these agencies have justifiably been attacked by civil rights legal groups for selling out on the issue of employment testing.

As Attorney General, it is likely that Judge Bell would agree with the Nixon Justice Department's position in employment testing.

In employment discrimination cases involving public—State and local—agencies, Judge Bell, contrary to the position taken by a number of other courts, has consistently taken the position that the standard of proof for showing job-relatedness is less for public employers than for private employers under title VII of the Civil Rights Act of 1964.

In a particularly shocking case in *Allen v. City of Mobile*, 331 F. Supp. 1134, S.D. Ala. 1971, affirmed 466 F. 2d 122, before the fifth circuit in 1972, the district court upheld a sergeant's exam used by the Mobile Police Department which 60.6 percent of the white applicants passed and only 14.3 percent of the black applicants passed, and on the basis of which only one black had been promoted to sergeant, without requiring—because a validation study would cost \$30,000—any local study to show that high test scores actually had any correlation with successful job performance.

The fifth circuit, in a general opinion, in which Judge Bell joined, simply affirmed the decision of the district court.

Judge Goldberg, one of the stalwart procivil rights judges of the fifth circuit, wrote a learned and finely reasoned dissent, noting that until equal educational opportunities are available for all children:

The Constitution cannot stand immobile while a generation of working police officers suffer from the continuing operation and effects of racial discriminatory procedures—however subtle.

While the majority would require no immediate pruning of the foliated discrimination, I would commit to the judicious husbandry of the able trial judge some immediate defoliation of the poisonous trees of discrimination so deeply rooted in the Mobile Police Department.

These kinds of decisions and cases continue.

It has been apparent for some time that racial discrimination in State and local employment is more pervasive, deep-rooted, and difficult to eradicate than it is in private employment.

By being against hiring as a remedy for past discrimination and against strict validation requirements for discriminatory tests, Judge Bell in effect fails to recognize the overwhelming problem of public employment discrimination and has taken positions against effective remedies which would eradicate it.

In the *Mississippi Highway Patrol* case, the Nixon Justice Department support plaintiffs' request for goal relief, calling it hiring goals and timetables.

If Judge Bell becomes Attorney General, it is likely that the Justice Department would retreat even further in employment discrimination cases.

As in the school desegregation cases, Judge Bell has not only shown no commitment to civil rights claims, but has actively opposed and resisted the application of the most effective remedies to root out employment discrimination.

We will move to the voting rights area of Judge Bell's history.

Because the Attorney General is charged under section 5 of the Voting Rights Act of 1965 with reviewing changes in voting and election laws by covered jurisdictions for racial discrimination, the nominee's sensitivity to racial discrimination in voting and redistricting is particularly important.

Here his record is mixed. Although he was on the right side in *Toney v. White* and in the critical case of *Zimmer v. McKeithen* (845 F. 2d 1297), decided in 1973 en banc by the fifth circuit, in which the fifth circuit struck down at-large voting in a Louisiana parish in which blacks were a majority of the population but a minority of the registered voters, he has been on the wrong side in other cases.

Of particular importance is the recent *Hinds County, Miss., redistricting* case in *Kirksey v. Board of Supervisors of Hinds County* (528 F. 2d 536), fifth circuit 1976.

In *Kirksey*, the issue is similar to the one presented in *Zimmer* but with single-member districts.

The Hinds County redistricting plan for supervisors' districts fragments and disperses the heavy black population concentration in Jackson, Miss.—containing 69 percent of the total black population of Hinds County—among all five districts.

Although blacks are in the majority of the total population in two of the five districts, whites constitute a majority of the total voting age population and registered voters in all five districts, thus completely depriving black voters of the opportunity to elect county officials of their choice in a county which is 39 percent black.

In the fifth circuit panel decision, Judge Bell joined in an opinion by Judge Gee—a recent Nixon appointee—sustaining the constitutionality of the redistricting plan.

In May of 1976, the fifth circuit voted to rehear the case en banc—a remarkable step to take in a case in which there were no dissents from the panel decision—apparently on the strength of our argument that there was an irreconcilable conflict between the *Kirksey* decision

and the *Zimmer* decision and other fifth circuit court decisions, striking down redistricting plans which fragmented and dispersed the black voting strength.

Judge Bell's vote in the *Kirksey* case shows a complete lack of sensitivity to the kind of racial gerrymandering complaints the Justice Department is likely to encounter in the next 4 years.

It is relatively easy to order a new election when a primary has been tainted with blatant discrimination and to strike down at-large elections in a parish in which whites have a registered majority. But cases involving gerrymandering of district lines—although having an equally disastrous effect on black voting strength—are the tougher kinds of cases which must be resolved in our favor if equal opportunities in political participation are to become a reality.

It is not enough to strike down at-large elections if counties and parishes are allowed to engage in the same kind of disenfranchisement through sophisticated line-drawing which equally deprives black voters of the opportunity to elect candidates of their choice.

Judge Bell's insensitivity to racial gerrymandering indicates that in the administration of section 5, black voters cannot rely upon him to protect their rights, thus completely frustrating the intent of Congress in enacting and reenacting two times a statute which theoretically has the greatest potential for protecting the voting rights of Southern blacks and other minorities of any act of Congress.

Moving to access to the Federal courts, one of the prime attributes of the Nixon judicial appointees is their commitment to ridding the courts of civil rights litigation by chipping away at the Federal civil rights statutes which allow minorities to sue to protect their rights—particularly in 42 U.S.C. 1983.

I have no doubt that if Warren Burger had his way, this—the primary civil rights statute available to remedy denials of Federal constitutional and statutory rights—would be repealed.

We would expect that President-elect Jimmy Carter's appointee would have a different attitude, but in this case it is not so.

The most striking recent step toward wiping out the section 1983 jurisdiction, was taken by the Fifth Circuit in *Muzquiz v. City of San Antonio* (528 F. 2d 499), again a case decided en banc in 1976 by the fifth circuit.

In this case, in an opinion joined by Judge Bell, the fifth circuit held that former police officers and firefighters could not, under this section, sue the trustees of a pension fund to challenge the constitutionality of a State statute barring them from receiving refunds of amounts contributed, because the suit was in reality one against the fund. And since the fund could not be sued under section 1983—which is limited to suits against persons—no jurisdiction existed.

The decision runs counter to a long line of cases which hold that the constitutionality of a State statute can be challenged by suing the officers charged with administering it.

Seven judges of the fifth circuit dissented. The most vigorous dissent was written by Judge Tuttle for himself and three other pro-civil rights judges.

Judge Tuttle strongly chastised the majority, of which Judge Bell was a part, for denying jurisdiction under section 1983, because of

the ever burgeoning area of relief sought under the statute. He warned that the court—

Seems to me to have whittled down the clear statutory grant of civil rights litigation under color of State law to little more than an empty promise.

The decision is shocking because it may bar civil rights suits against public officials entirely unless some alternative statutory basis for jurisdiction is found.

The decision may cause particular difficulties in cases seeking back pay and attorney's fees in teacher and State and local agency employment discrimination cases.

I would like to move hurriedly to the conclusion, in dealing with Judge Bell as an individual and as a person.

As a member of the three-judge panel of the fifth circuit, before which the Atlanta area school desegregation case was pending, Judge Bell attended—without informing counsel for the plaintiffs—meetings with community and business leaders in a successful effort to work out a compromise of the case involving only the city of Atlanta.

You will recall this case was brought by the national office of the NAACP.

This conduct directly violates the letter of the Code of Judicial Conduct, canon 3A, paragraph 4, and the spirit of canon 2B.

In 1960, as Georgia Governor Vandiver's chief of staff, Griffin Bell told the Georgia Legislature that he would resist school desegregation in the State by every legal means and remedy available to us.

Continued membership in the private clubs, which as a matter of practice exclude Jews and blacks, while sitting as a fifth circuit judge, constitutes an affirmative act of racism and overt support for and sympathy with racial discrimination.

The issue is moral rather than legal. It begs the issue to insist that there is nothing illegal about private club discrimination. It is immoral and racist, whether or not it is illegal.

Judge Bell has deceived us about his support of the nomination of Harold Carswell for the U.S. Supreme Court.

Further, Bell's support of Carswell tells us much about the man—Bell—and his judgment.

Carswell was a mediocre-to-bad judge who regularly decided against the claims of blacks in civil rights cases, who supported segregation of the races, and who was a member of the same kind of clubs Bell belonged to.

As Attorney General, Bell would be charged with the responsibility of recommending to the President, nominees for Federal judgeships throughout the country—from the Supreme Court to district courts.

I don't believe we want Carswell-types sitting on Federal benches throughout the country. Because to do that, it would mean that we would have to, as blacks, return to the same tactics that had to be used in the 1950's and 1960's to overcome the terrible burden of racism that our country has historically imposed upon the black community.

And as one who has come through that particular period of our Nation's history, I do not willingly declare that I want to return there. And I will only be carried back to that era of our Nation's blight kicking and screaming.

I certainly hope that the Senate of the United States and the Judiciary Committee will find it possible to go further into examination of Judge Griffin Bell. And if you will find what we have found, your vote then cannot be to confirm Judge Bell to the position of Attorney General of the United States.

Thank you.

Senator KENNEDY. Thank you very much.

That is a very thoughtful and concise commentary on a number of different features of Judge Bell's performance which concern you. And I am sure they concern people not only in your State, but across the country.

Would Mr. Clarke like to make any comment before we get into any questioning?

TESTIMONY OF ROBERT CLARKE

Mr. CLARKE. Thank you, Senator, and members of the committee.

I did not come here with a prepared statement, but I would like to say that I wholeheartedly support what my colleague has said 100 percent.

It is my honest belief that I share the opinion of millions of Americans of all races and of all walks of life.

The gentleman who is before you for confirmation has a record that speaks for itself. I am not saying that an individual cannot change. As times and positions change, I have changed also.

If you would allow me to say it, the late President Lyndon B. Johnson, is a typical example of change.

But before one serves in an important position, having the power to change the course of history as well as the destiny of the generation of people, one should have demonstrated change before assuming such a powerful office.

To be born into the past and present culture is too much to overcome in a lifetime.

We have a scar on us. The minorities and black people who were born in this culture have a scar on us. Some of us, like myself, realize what it means. We realize that it is too much to overcome in a lifetime.

We are willing to fight with it, but God in Heaven knows that we do not want the unborn population to be born under the same culture and with the same scar on them that we have on us.

It is my honest opinion that with the confirmation of the gentleman that you have before you this is exactly what we will be doing.

Senator KENNEDY. Mr. Henry, in the latter part of your testimony you point out in discussing Judge Bell as a person that Griffin Bell told the Georgia Legislature that he would resist school desegregation in the State "by every legal means and remedy available to us."

I have not seen that quote or statement before.

Mr. HENRY. That is from the Southern School News in 19—

Senator KENNEDY. Will you make it a part of the record and give us with reference?

Mr. HENRY. Yes.

[The material referred to had not been received at the time the hearing was printed.]

Senator KENNEDY. In its entirety, it has been made a part of the record.

Given the thoughts that you have in the area of voting rights, education, and employment, where do you really stand in terms of your assessment of the judge's performance? Do you think that he was a judge who was an obstruction toward achieving racial equality under the *Brown v. The Board of Education* decision, which found the separate but equal doctrine is no longer the law of the land?

You say he was dragging his feet in terms of implementation and doing everything to resist the decision within the scope of the law? Or do you say he was basically, in reviewing these decisions, a moderate who was not out as far, in terms of implementing both the letter and the spirit of those decisions, as some of the other distinguished and courageous judges of the fifth circuit were that you've mentioned?

Where, in your own mind, do you place him on the spectrum—given the kind of study you obviously have done?

Mr. HENRY. Senator Kennedy, as I have mentioned, for 15 of the 16 years that I've been president of the NAACP in Mississippi, Judge Bell was a member of the fifth circuit. When we carried a case to the fifth circuit, we always knew we did not have Judge Bell's vote, as far as our particular position was concerned.

I find Judge Bell most objectionable in the areas of desegregation and the Voter Rights Act of 1965.

The Voter Rights Act of 1965 still places Mississippi, my home State, in the very necessary position of clearing with the Attorney General of the United States or the District Court of Washington, D.C., any changes that we make in our voting rules and regulations.

There have been several attempts by our State legislature to continue to pass legislation that would be detrimental to the black community in our area.

It has flown up to the Attorney General of the United States, and much of it has been continuously turned down. I really fear that if Judge Bell is confirmed, that the kind of legislation that we are most objecting to will become again a part of our structure in Mississippi.

I think it will be approved by the Attorney General. There we will have to go back to the courts, school board by school board, law decision by law decision.

I find him a judge who will do little, if anything—or as little as he can—within the structure of the law to help provide for the onward progress in human relations of our Nation.

I think an area of attitudinal progress which we have made some steps forward in—

I am just asking that we do not place ourselves in a predicament or a situation where I am going to have to be pounding on your door again every day in the year, saying: I need some help. Mississippi's in trouble. We cannot get the State legislature to cooperate with us. And the laws that they are now passing and the Attorney General is approving and, consequently, we have a bad time on our hands again.

Senator KENNEDY. Given the problems that we are facing in this country of discrimination and racism, the standard that ought to be applied to any attorney general is not one based on passive enforcement of the law but one of exercising the full range of powers that

exist within that particular office and within the administration to see that there will be the achievement of equal rights for the citizens.

That is your standard in terms of the Attorney General. And you feel Judge Bell does not meet that standard? Is that correct?

Mr. HENRY: History tells me that there has been another period in our Nation's history where we had an emancipation thrust going forward that was blighted by circumstances. I am referring now to *Pless v. Ferguson* case in 1896, which was a Supreme Court decision, which made segregation the law of the land, after we had come from 1865 to 1876—a period of 11 years—with the passage of the 13th, 14th, and 15th Amendments and several other statutes that gave blacks an opportunity to be a part of what this country is about.

But from the year of 1896 until 1954, we lived with a struggle in this country where segregation was actually the law of the land, imposed upon us by the Supreme Court of our Nation.

I just do not want to have to engage or embark on what we would call a third emancipation. We hope to make it the second time around.

Senator KENNEDY. Let me ask you, Mr. Henry.

Judge Bell told the committee that he presided over the panel which drafted the desegregation plan for the State of Mississippi and, as he stated, in charge of designing the remedy covering the Mississippi schools. He said for a while he was called the superintendent of the schools. This is what he said:

I would have confidence in a judge who was sent by the chief judge to preside over a panel who took over 30 Mississippi school cases where the Supreme Court ordered the schools to be desegregated at once.

There will be hundreds of people who know that all the school superintendents and lawyers were called to New Orleans and told that they had to do that. They did do it. All those schools have been desegregated. I think I did it with an even hand.

What is your assessment of that?

Mr. HENRY. I'm familiar with the Supreme Court of the United States taking a position on these 30 particular school districts and the U.S. Department of Justice entering into the support of what we were about.

In the desegregation of the schools that took place, the rules of the game provided for as little desegregation within that structure as was possible. We were not nearly able to arrive at a unitary school system where black children and white children were equally involved, or black faculty as such was equally involved, in the school progress.

Since that particular era of that particular set of rules and regulations have come down, we have now a school system in Mississippi that is predominantly black because of the white access to the private school systems.

But, in addition to that, the amount of protection that is given to the preservation of black teachers in those schools is completely eroded.

There are, roughly, perhaps 10 or 12 high schools in our State now that have black principals—although a majority of the schools have a majority of black student body.

The permissions of the decisions written by the court and supported by the Justice Department were such that they made the burden of school desegregation more bearing upon the black community. The

black community suffered the pains of what desegregation was all about, in loss of jobs and loss of positions.

The children themselves—I can take my school district in Clarksdale, Miss.—was a part of that situation. I can deal with that.

In the total administration of the school system, we do not have a single black. The whole administration is white.

Senator KENNEDY. In summing it up in layman's language, how do you assess those particular orders for those schools?

Mr. HENRY. They were minimum. They gave us the least integration possible.

Senator KENNEDY. Finally, before my time is up, let me ask this.

What value should we place upon the judge's assurances before this committee that he would strenuously support the constitutionality of the Voting Rights Act and use the full resources of the Justice Department in various areas where the law has been challenged in a number of the Southern courts?

He said he would pursue actively within the various governmental agencies an activist policy in terms of fairness in employment of minorities. He said he would exercise every degree of power that he could to insure that various Federal programs were not going to be used for supporting the purposes of segregation. He has said he would attack various zoning ordinances, local and State, that discriminate against blacks on the basis of housing, and he has said he would support those efforts in the Congress and Senate that were resisting the movements toward limiting the various Federal courts from providing equitable remedies in the areas of desegregation.

What value should we place on those assurances, given the background of Judge Bell—both in terms of his positions and as a man of integrity?

Mr. HENRY. I am from a part of the country where we deal in Biblical cliches too much, but there is one that says: By his fruits you will know him.

By the fruits that Judge Bell has produced, I would be very hesitant about accepting his promises when his history does not reveal that what he is now saying he will do is what he has done.

I am a bit skeptical about really why Judge Bell left the fifth circuit. We were beginning to get quite a few rulings which were perhaps further advanced than Judge Bell would like to have seen the fifth circuit go.

I need an answer, really, why he left the fifth circuit in the first place. Did he leave the fifth circuit because of the fact that more progress was being made or carried out than he could handle?

I would be very skeptical about accepting expedient promises from a person who might be using them simply to gain a position of acceptance of the nomination to the slot of Attorney General.

I say that because I know what my limitations are regarding dealing with him if he performs badly.

I do not know what your powers are to deal with him if he performs badly.

If I were in your position, I could perhaps take a different position. But seeing it from where I sit, as completely ineffective and having anything to do with what he does after he is confirmed, I would beg you not to do it.

Senator KENNEDY. Senator Mathias?

Senator MATHIAS. Mr. Henry, I want to thank you for being here. I am very much interested in what you have had to say.

As you may know, from coverage of the earlier parts of these hearings one of the questions that has arisen is what context in which to place Judge Bell's earlier activities. For instance, in the Vandiver years.

Massive resistance had a climate which was a different climate than today. I think we will all agree on that.

But when we try to recreate the atmosphere of those days and to then assess his line of conduct, it is somewhat difficult because it is impossible to totally recreate history.

I am wondering if your recollection of those days includes any leaders in the white community who did, in fact, stand up; who did, in fact, say that massive resistance was not the right policy or the proper policy for this country to pursue, or even for communities in the Deep South to pursue.

Do you have any feeling about what the context of the times was?

Mr. HENRY. Yes. I sort of lived through it. Were it not for the fact that we had numerous persons in the white community who supported us in the black community in the aspirations that we desired, then we could not have made it forward.

I can mention Judge Wisdom. I would be happy to endorse him. Judge Tuttle—happy to endorse him. Judge Johnson—happy to endorse him.

These are men who were involved in that era.

Coming into the present day, there are Goldberg, who is a great man; Frank Parker from Mississippi who is a great barrister; and numerous whites from the South. There are the Harding Carters and the Owen Coopers.

I have learned, Senator Mathias, that black is not necessarily a color. It is a state of mind. In my observation and involvement in the total desegregation and the rethinking of what the South is about, I am very proud to have known many whites.

I am obligated and appreciative of the fact that many whites stood side by side with us in trying to help us get to where we are.

Senator MATHIAS. I certainly share your great respect for Judge Wisdom and Judge Tuttle and Judge Johnson and the others you have mentioned. I think they have carved for themselves a permanent place, not only in the American judicial history, but in the American social history. I think they have been enormously important.

I have to say this: At the time that Judge Bell was a young lawyer beginning his career in the 1950's in the Vandiver years, many of these men were already on the bench. They had made it in effect.

What about people who were in comparable positions who had not made it yet and who still had their row to hoe? Were some of them willing to stand up also?

Mr. HENRY. Sure. Harding Carter is right now perhaps 38 or 40 years old. Frank Parker is perhaps 45 or 50.

The one parallel that I have for you, Senator Mathias, is that Judge Bell and I started out our tenure of duty in the area of civil rights about the same time. I became president of the NAACP in 1964. He was on the fifth circuit in 1964.

My past 15 or 16 years—and I'm talking about 1973 and 1975—I knew I never had Judge Bell's vote in any instance where civil rights was concerned.

In continuing the dialogue with you, what instances in the activity of Judge Bell do any of you see that indicates that he has changed from where he was to where he is now? I'm talking about except what he has said and what he has done.

Senator MATHIAS. I'll get to that in a minute.

But on the point that you raised about the fact that you never felt he would vote favorably to a cause in which you were involved, I think in response to a question from Senator Kennedy you said that his performance was minimal. I believe that's the word you used.

In other words, what you are really telling us is that he never flouted the law. He did not ignore the law. He only went as far as the rulings of the Supreme Court or the statutes enacted by Congress or the Constitution absolutely required that he go. Is that correct?

Mr. HENRY. There were no smoking guns. I will put it that way.

Senator RIEGLE. Would you repeat that?

Mr. HENRY. There are no smoking guns. But his actions were always, as far as I could interpret, to do as little as we could get away with.

Senator MATHIAS. We don't need any more Carswell-type judges. But do you think that Judge Bell himself was a Carswell-type judge?

Mr. HENRY. Yes.

Senator MATHIAS. As you say, there are no smoking guns. There are no white supremacy speeches as there were in the *Carswell* case. There is no duplicitist act like the country club deal in the *Carswell* case. Those were smoking guns.

Mr. HENRY. But you're dealing with *Carswell* now in the era that he was in when he was opposed to go to the Supreme Court. You are dealing with the era that Judge Bell was in as chief of staff for Governor Vandiver of Georgia. That is the same period of time.

The expressions of Governor Vandiver with Bell as his chief of staff were every bit as inflammatory as Judge Carswell's. We are dealing with the same period of time. I am sort of moving him up from that period.

Senator MATHIAS. I thought your exchange with Senator Kennedy was extremely interesting on the sort of actions we might expect from Attorney General Bell.

As Senator Kennedy pointed out, we have questioned him very closely on what he would do.

Let us be honest with each other. When this train leaves this station, it is not likely to stop rolling for 4 years.

Mr. HENRY. That is right.

Senator MATHIAS. A President can remove a member of his Cabinet. Impeachment is a possibility. But those are remote possibilities.

Mr. HENRY. Yes; they are so remote.

Senator MATHIAS. So we deal really with the fact that what is said today is the direction in which we will go, but we have some very specific pledges in black and white, and these have been effective in the past. Of course, the most famous recent case is that of Secretary Richardson's pledge with respect to the integrity of the Special Prosecutor which he took so seriously that he resigned his office rather than violate that pledge to this committee.

So these pledges, made in open session and recorded on the record and well publicized, have a considerable moral force.

For instance, with respect to the Civil Rights Division, the judge pledged that he would request sufficient personnel to enforce the civil rights laws. We do not have that today.

That's specific pledge, and it's within the jurisdiction of this committee. While we cannot force him to fulfill it, we can remind him of it. Because he comes back to this committee on frequent occasions for various purposes.

What is your reaction to that?

Mr. HENRY. My reaction, Senator Mathias, to that is this:

In my personal history, I have had the experience of being involved with persons who held the office of Attorney General of the United States. I can recall that there was a time, under Attorney General Robert Kennedy, Katzenbach, and even back to Brownell, those of us involved in the Civil Rights Committee in our part of the country had the ear of the Attorney General with regard to problems that affected us. We could call the office of the Attorney General and we got a response and an answer.

I have lived with that era. I have also lived with the past 8 years where we have had Attorney Generals who were not responsive and would not answer.

I would place Judge Bell as a continuation of what we've had for the past 8 years. I would like to see the office of Attorney General and the man who heads it to be a person so that those of us who are struggling still with the wounds of inhumanity, which have been infected on our country in the years, would have a sensitivity and empathy towards responding there. I am just afraid that we do not have that again.

Senator MATHIAS. That is all I have.

Senator KENNEDY. Senator Bayh?

Senator BAYH. Mr. Henry, it is good to see you in Washington. I had the opportunity to be with you in the precincts of Mississippi.

Mr. HENRY. That is right.

Senator BAYH. And elsewhere in the country.

I have come to know you as a friend and as a sincere advocate for those important human values which distinguish our society from others—those values which I think we all realize are not fully available in equal portions to all of our citizens.

Certainly the feeling that you have expressed and because of my personal awareness of your sincerity and your background and the fact that you've laid it on the line yourself, that has an impact on my thinking.

I would like to, if I might, Dr. Henry, say this:

The old Republican elephant—or let's say the symbol of the elephant has been used as an example to this committee—I think first by Clarence Mitchell—as a reason to explain why some of the black citizens have supported Judge Bell.

There was also my own reference that in trying to determine what we should do and what really happened in light of today's standards is like having a blind man feel an elephant and try to tell you what it is. It depends on what part of the elephant he touches.

Senator MATHIAS. If the senator will yield?

Senator BAYH. I will yield.

Would you rather I use something else?

[Laughter.]

Senator MATHIAS. I was present when Mr. Mitchell told that story. I thought it was a very effective story, but I do not recall that he had enlisted that elephant in any particular political party.

[Laughter.]

Senator BAYH. No; in fact I think I just changed what I said and said the symbol of the party.

Senator MATHIAS. I would not want to cast any kind of or let any implications take root here that are not justified.

Senator BAYH. I think my friend realizes that that was the farthest thing from my mind. In fact, maybe I should use another symbol like a chimpanzee or a giraffe or something similar. I think what we are trying to do is to really find out what did happen, not only then but how does it relate today. I look at things as objectively as I can. My past experience, of course, is very much a factor in assessing them.

I note in looking at your memorandum the following paragraph. I would like to clarify this, if it needs to be clarified.

In 1960, as Georgia Governor Vandiver's chief of staff, Griffin Bell told the Georgia Legislature that he would resist school desegregation in the State by every legal means and remedy available to us.

Now I have heard that charge attributed to the Governor, but I have never had those words attributed to Judge Bell.

Mr. HENRY. You will find it in Southern School News. I will provide it.

[The item referred to had not been provided at the time the hearing was printed.]

Senator BAYH. What is Southern School News? Has anybody actually heard him say that?

Mr. HENRY. It is a quote in the article.

Senator BAYH. It is funny that all of the people we have talked to, of those who have been critical and those who have been friends, have always been very clear to point out that sure Vandiver said that but they have never attributed that to Judge Bell.

I think if you can, indeed, find someone who actually heard Judge Bell say that, I think you have a smoking gun. But nobody else has been able. You didn't hear him say it?

Mr. HENRY. No; I am quoting.

Senator BAYH. That is such a serious charge. I don't know School News.

Senator KENNEDY. Will the Senator yield?

Senator BAYH. Yes.

Senator KENNEDY. I think it would be useful to get that statement and the text which it is in. As I understand it, Judge Bell indicated that he never addressed the legislature or gave any of the speeches. I think we ought to get that in the record.

We will make a part of the record the publication to which you referred.

Senator BAYH. I know you would not make that charge if you did not believe it. You have not been here. There is no reason that you should have been here to hear all the testimony. But that is such a serious charge that I think it is important that we either lay that to rest, or we prove it.

I have seen things written about you and myself that I think neither one of us would want to vouch for the authenticity of and that might be the case here.

Senator RIEGLE. Will the gentleman yield?

Senator BAYH. Yes.

Senator RIEGLE. I thank you for yielding.

In light of the fact of the developments yesterday and the fact that there is a tentative vote this afternoon at 4 o'clock, I wonder if it would be appropriate to ask a member of the staff now to proceed on behalf of the committee to find that reference—however it can best be done to get it in hand.

Mr. HENRY. I will give a phone number.

Senator RIEGLE. I do not know that the witness—he is going to be here awhile. I do not want that time to be lost.

Senator BAYH. I think the witness is saying that he did not hear it, but he heard it reported in the School News.

Mr. HENRY. I read it. Yes.

Senator BAYH. I am sure that he would not try to misrepresent anything.

It would be simple if we could ask the staff to check to see, first of all, if Judge Bell ever addressed the Georgia legislature. If he did not, then it seems to me it is a moot question. And since Vandiver did, it is easy to understand how you can make that transposition. So could we have the staff, Mr. Chairman, do that?

Senator KENNEDY. Yes; we will do that. We will instruct the staff to get the publication and will make it a part of the record.

According to the record, there is a quote in the 1960 session of the legislature about school closing continuing with Vandiver promising to veto any bill that would lead to integration.

And also the following: "We are going to resist again and again and again, exhaust every legal means of remedy to us, and keep the schools segregated."

We will work to clarify the record on this point. I'm sure Mr. Henry would want it that way. I think it is an important point.

I would also say, since I have been guilty of using more than my time, that we do have six witnesses. We want to try to make sure that all are heard. I'm sure the committee wants to hear all the witnesses. So let us keep that in mind.

Senator BAYH. I have just a couple more questions, and I will not belabor.

We have had a number of people testify on both sides of the issue that have been personally involved as far as the desegregation cases are concerned.

I think that the way that you and I would look at what should be done on the scene is probably very similar. I say that not being involved in all of the technicalities, but I have worked with you in areas where I do know that we had similar standards and views.

I assume that the judges you mentioned, and Harding Carter, and so on, would adhere probably to that same standard. Is that accurate?

So I guess the question that perplexes me is whether that is the only standard that we should accept as far as this nominee is concerned, that is a standard that was applied at the given moment, or whether a

lesser standard of conduct or a lesser standard of progress, with an expression of greater understanding today, might be acceptable.

Would you say that the only kind of person we should accept is one who has the Harding Carter standard or the Birch Bayh standard or the Aaron Henry standard as it applied back in those particular cases?

Mr. HENRY. I think, Senator Bayh, that in the position of Attorney General of the United States where decisions are going to be made with legislation that affects the forward human personal progress of our country, we do not have a more sensitive area.

I feel that the person who occupies that position ought to be one who has demonstrated that he has the empathy, the concern, of the people who have been denied many of the privileges that our country affords. And that he should have an action history of actually having promoted programs and proposals that would help erase the blight of racism that our country has tolerated all of these years.

In the position of Attorney General of the United States, I think he ought to have those requirements.

Senator BAYH. That is what I want in the Attorney General's office and in Justice now. We haven't had it. I wonder how far back we can go to bring that standard on in. I understand your reservations.

Let me ask you this: We had a fellow named McKinney who is a State representative and a fellow by the name of Cochren, I think it was, who ran the YMCA down there. We had Lonnie King. All these were folks who had been involved in one level or another in the Atlanta community.

They have given the judge high marks.

How can they come to a different conclusion on that than you do, sir?

Mr. HENRY. It might well be, Senator Bayh that there is a difference in experiences with regard to the gentlemen involved.

I have served on the national board of the NAACP. There are 64 members of us. We met a few days ago in Washington and New York to vote unanimously to oppose the nomination of Judge Bell. We were there from the North, South, East, and West, black and white, men and women.

The total organization unanimously took this position. I do not say that the NAACP speaks for all blacks in this country but I think we speak for more than anybody else.

Senator BAYH. I'm sure that's the case. As I told our friend, Clarence Mitchell, I was proud to be a life member of that organization. I find it very difficult not to be one of the leaders of the charge, sitting out there on the other side of the table or espousing unequivocally the position of those of you who represent this organization, because usually that is where I am.

Well, I know we have time constraints.

I appreciate, Mr. Henry, your presence and your thoughts.

Senator KENNEDY. Senator Heinz?

Senator HEINZ. I think you have done a very good job in making it possible for you to be here today. Your testimony is extremely helpful and particularly precise as to wherein your reservations lie.

I think the members of the committee today have done some very good questioning of you to elicit further information.

I have no questions.

Also we have a long witness list. I do not want to be a part of the problem in preventing anybody from testifying and getting their documentation together before 4 o'clock today.

Mr. Chairman, I have no further questions.

Senator KENNEDY. Senator Riegle?

Senator RIEGLE. I especially appreciate your appearance here. I know that, coming from Mississippi, as you have done in the last 2 or 3 days and the weather there and here and getting this material together on short notice, I know is a useful service to us. I especially appreciate it.

Also I want to say that I have great esteem for you; and, therefore, for what you have to say to us. I think it is of great importance.

I have read your statement and listened to what you have said in response to the other questions. I do not want to infringe on anybody's time, but I do want to take the time that I think is required for you and I to discuss this further now.

First of all, I want to establish whether or not Judge Bell is in the room today.

I know he has been here at other times listening to opposition witnesses, but I want to know whether or not he is here at the present time.

[No response.]

If he is not here, I am sure it would be his intent to read the record to see what has been said here.

Mr. Henry, some of the cases that were brought on the fifth circuit and some of which you have referred to and others which have come before, were you present at any of those proceedings yourself?

Mr. HENRY. No.

Senator RIEGLE. Do you know from discussions with others who have brought cases what the manner of Judge Bell was, apart from his opinion? I am talking about his personal manner.

Mr. HENRY. He was fairly noncommittal. I know the judge. I have met with him.

Senator RIEGLE. Was there ever a suggestion in his personal behavior toward people, coming forward as part of a case presentation, that anything in his personal manner or his fairness would suggest anything less than an evenhanded approach?

Mr. HENRY. The decisions that he rendered and the opinions that he wrote through the years indicated that his support of those of us who were involved in the civil rights movement was less than we thought we had reason to expect.

Senator RIEGLE. I understand that judgment that you're offering in your testimony. But, for the moment, I'm setting that aside and saying that in terms of personal conduct and his behavior toward witnesses and such, was there a suggestion there like the behavior I mentioned earlier?

Mr. HENRY. No.

Senator RIEGLE. You said in your testimony:

His record is remarkable, and I know of no case in which he wrote a pro civil rights dissent when the majority decided against a civil rights case.

How about situations where there was an affirmative finding of a pro civil rights finding? Is there a similar pattern of his being on the other side of those kinds of findings?

Mr. HENRY. Not a constant pattern, but there were times; yes.

Senator RIEGLE. Are you familiar enough with the case history to be able to give a more precise judgment on that? In other words, if there is a mixed situation, can you give me any sense for the ratio of that mixture?

Mr. HENRY. In the Mississippi highway integration employment position, where we were trying to get blacks hired either 1 to 1 with whites or 2 to 1; and, of course, in the highway patrol position in Mississippi today, of about 150 to 200 patrolmen, there are only 4 blacks.

Judge Bell was unwilling to give us the goals hiring that would make a meaningful difference in the way the highway patrol was structured in that State.

Senator RIEGLE. But in terms of the sum total of accumulation of findings in all civil rights cases, where there would have been, let's say, an affirmative finding or procivil rights finding—

Mr. HENRY. He was generally the swing judge, who voted with the majority in most cases—whether the case was for us or against us.

Senator RIEGLE. So then there is a bit of a difference. In one case, you know of no example where he was a person who was, that is, where he was in the teeth of a majority opinion the other way, but on the other hand there are times when he was a part of an affirmative majority on the procivil rights side of an issue? Is that right?

Mr. HENRY. Yes.

Senator RIEGLE. If I recall his testimony correctly—and it's been referred to in passing here earlier—there was an assertion by the judge that he integrated more schools of the South than perhaps any other judge.

I think he may also have made that claim with respect to Mississippi.

Mr. HENRY. I think that is probably true in that in his integration process he did as little as possible. This became the standard by which schools were integrated.

Senator RIEGLE. In that respect, if you compare him with other judges, you had a similar kind of almost an executor responsibility to try to carry out the development, I guess, and the implementation of these plans. Does he stand apart from other judges at that time period and in the area, insofar as being someone whose behavior would be, from your point of view, particularly offensive or particularly provocative or not?

Mr. HENRY. You take the highway patrol case in Alabama. Alabama now perhaps has more black highway patrolmen than any other State in the country because of Judge Johnson, a member of the fifth circuit. The Mississippi case is completely different. We perhaps have fewer.

Senator RIEGLE. Again, I would like to broaden this out, for as complete a sense of his overall record as you have in terms of whether or not he stands apart in terms of his pattern of activity from others who were called upon to exercise—I am particularly interested in school desegregation, I mean it with reference to that point. Does his conduct materially differentiate him from other judges who had the same responsibility at the same time?

Mr. HENRY. Well, you know, judging the whole rank of Federal judges is a pretty broad parameter. I would just like to say that his rulings that affected us in Mississippi were always less than we thought we had a right to have.

Senator RIEGLE. You see, one of the things I'm driving at here is that I want to figure out where he stands in whatever that group of judges are who were called upon to deal with the same types of problems and whether or not his behavior sets him clearly apart from the others.

Mr. HENRY. He's completely apart from Wisdom and Johnson. He's completely apart.

Senator RIEGLE. I am wondering if there are still other judges who were called upon to oversee in a direct fashion the working out of these integration plans with whom we might compare him?

Mr. HENRY. I would say you can compare him with Judge Coleman in Mississippi. He would be about the same.

Senator RIEGLE. One of the factors that was also raised by Senator Bayh is the fact that some black people and activists from Georgia have appeared on behalf of Judge Bell saying that their experience within the circumference of their dealings was such that they felt that they did detect an affirmative push on his part and that he was, in their judgment, trying to pull Governor Vandiver in the direction of a more forthcoming response on civil rights matters.

You made a passing comment with respect to the kind of weight that we might give that testimony.

Their situation, it seems to me, in the Atlanta community—which is a particularized area but one that spread out to the entire fifth circuit—that gives you, for example, as someone away from there, a different vantage point from those who were there. And you have made that point.

But it is difficult for us as members of the committee to judge the degree to which Griffin Bell was moving in the direction of trying to bring about an application of equal justice or whether, in fact, he was sort of pulling in the other direction and sort of making that process take as long as possible.

Mr. HENRY. That is my opinion.

Senator RIEGLE. I understand it is. But that is sort of the differentiation that has been established here between citizens whose concern in this area ought to have been similar but whose vantage points were different.

This is one of the great difficulties I think we face. That is, to try to somehow balance these two views against one another and reach some kind of judgment.

Do you think he's an honest man?

Mr. HENRY. Well, I think there is one thing. This will indicate it differently. His position on Judge Carswell where he said his support of him was before he knew he had made a highly inflammatory speech. Of course, he later retracted that. Maybe that's a point of integrity—to see a wrong and admit it. But that one instance I know about.

Senator RIEGLE. Another point has been made that he obviously works for the President, and that in the end we have to also look at the degree of confidence that we have in the President with respect to civil rights matters and equal justice.

Mr. HENRY. I have no problem with my feeling of support and integrity of the President of the United States. I have a good feeling about President-elect Jimmy Carter.

Senator RIEGLE. Enough so that if you thought there were differences of opinion—where the President thought one particular remedy, let's say with respect to voting rights, was necessary in Mississippi, and Griffin Bell might have had a somewhat different view—that you would have confidence that the President would see to it that the approach he wanted to follow would be followed?

Mr. HENRY. If he desired to do it. Of course, I have also read where President-elect Carter has indicated that he is going to permit each Cabinet Secretary to run his own shop. That disturbs me, particularly if that also applies to Judge Bell.

Senator RIEGLE. Let me come back for a minute to the old question of how active Judge Bell has been in terms of moving the law forward to provide equal justice.

I am wondering what your own feeling would be about the degree to which there is any essential conservatism in his viewpoints and in his judgments which would extend, not just throughout the civil rights cases but across the board in every other area.

In other words, I'm wondering if you detect any kind of abnormal behavior pattern by him in the area of civil rights as opposed to things that would deal with antitrust cases? Or the whole broad range of cases? You would probably be less familiar with those.

Mr. HENRY. I could not say that. My vantage point has been human relations and human rights. That is where I would speak. I have had experience there.

Senator RIEGLE. I have two other things.

One of the things that I have wondered about is the degree to which a flaw in this nominee might be the fact that there is a blind spot with respect to a lack of equal justice which has been an age-old problem in this country and which we are struggling to change. There is the degree to which there is a keen and acute sensitivity to that problem.

The question is whether or not the fruits of his history as you described them earlier, add up to suggesting that there is a blind spot, whether in the private club memberships or the carelessness in responding sort of as a colleague to Carswell's request for a recommendation in his behalf, and so forth. Or whether there is an insensitivity or a blind spot that we can identify time after time after time which adds up to a pattern. And whether or not that would be, in a sense, a deficiency that ought to prompt the Senate to seriously consider turning down the nominee?

Mr. HENRY. I would think that that would require more research than we have done, in order to really develop a pattern, shall we say, of genetics that would give us a certain probable outcome, if we have say 10 pins and needles.

Senator RIEGLE. Here's the thing that concerns me.

You come here today with your own record and history. You say to us that one of your major concerns is how the Voting Rights Act is going to be applied in the future. You wonder whether or not efforts to circumvent the law, or to deny the law or set the law aside, will not be pursued aggressively by the Justice Department if Mr. Bell is there.

This is your apprehension. You're saying, I think, in effect that that is the apprehension of a lot of black people in Mississippi. That is, that they would have this concern.

That's why I think, as difficult as it is, our task is to try to establish whether, in fact, there is a pattern. Because I think by each of the single events by themselves they are not sufficient to turn aside this nomination. Others may disagree with that.

Whether or not there is a case for turning it aside, I think depends upon what you get when you add them all up. And whether or not they add up into a consistent pattern that shows a deficiency or defect is quite apart from the question of whether somebody's viewpoint today is different than it was at some time in the past.

The question is whether there is a steady, consistent pattern that shows something missing that ought to be there in an Attorney General. It seems to me that that is where our search is, or in a sense has brought us.

Mr. HENRY. My own feeling, Senator Riegle, is that it is there. I have not heard all the testimony that you have heard. You have the advantage of information that I am not privileged to. But my own feeling and my own experiences and my responses to what he's been about, I would say that to me there is that absence that I would want to see in the Attorney General of the United States.

Senator RIEGLE. That is all for me. I thank the witness very much for coming to be with us.

Senator KENNEDY. Senator Sasser?

Senator SASSER. Mr. Henry, I must say it is good to see you again.

We served 3 years on the Democratic National Committee together, which for me was a very interesting and I might say a rewarding experience.

We appreciate very much your coming up here today and giving your views which I regard highly. We do not have a lot of time, so I would just ask you one or two very brief questions, if I may.

Have you ever appeared in Judge Bell's court at any time?

Mr. HENRY. We would be on appeal at that point and only the lawyers would appear.

Senator SASSER. I see.

Did I understand you to say in response to Senator Riegle's question that you would place Judge Bell in the same category as Judge Coleman, who is also in the fifth circuit court of appeals?

Mr. HENRY. Yes. In the area of being insensitive or sensitive to the human rights area.

Senator SASSER. You do not think he would have any greater sensitivity than Judge Coleman, for example?

Mr. HENRY. No.

Senator SASSER. In the field of civil rights?

Mr. HENRY. That is correct.

Senator SASSER. That's all, Mr. Chairman.

Senator KENNEDY. I want again to thank you very much, Mr. Henry. You have made a very important statement and were extremely responsive to these questions, and we value this testimony, and our members will and the Senate will.

We thank you for coming here and sharing your thoughts with us.

Mr. HENRY. Thank you.

Senator KENNEDY. Our next witness is Rev. Jesse Jackson, national president, Operation PUSH, People United to Save Humanity.

We are glad to have you here. We want to indicate to all the witnesses that we know they went to considerable effort to be here with us this morning. We want to thank you very much for joining us. We look forward to your testimony.

Senator MATHIAS. Mr. Chairman, I want to ask Mr. Jackson if he remembered a sermon he preached in Resurrection City on the subject of Jonah and the Whale? He may not remember it, but I remember it as one of the most effective speeches I've heard in my life. It was very impressive.

Senator KENNEDY. Mr. Jackson, would you proceed?

TESTIMONY OF JESSE L. JACKSON, NATIONAL PRESIDENT, OPERATION PUSH

Mr. JACKSON. I am the Rev. Jesse Jackson, national president of Operation PUSH. Thank you for the invitation to appear before this committee and to testify.

In 1977, on the eve of our third century as a nation, President-elect Carter has a tremendous opportunity to once again get this country unified and moving.

Mr. Carter, especially during the primary campaign, demonstrated an unusual gift of perception by reading the mood and needs of the American people better than anyone else.

While the other candidates talked about programs and budgets, Mr. Carter sensed that the American people could not live by bread alone. We needed a renewal of the spirit. We needed to hope again, to believe again, in the basic honesty and integrity of our leaders and our institutions.

He struck a responsive chord in the American breast when he spoke of love, goodness, decency, and never lying to the American people.

The obvious fact of Mr. Carter's religious beliefs and convictions seemed to be the wellspring from which his deep moral commitments and concerns for justice spring.

Our testimony today, in its simplest form, is an appeal for Mr. Carter to be morally consistent. And we are opposed to Griffin Bell's confirmation because Mr. Bell's nomination does not represent moral consistency on the part of Mr. Carter.

Mr. Bell—the creature—cannot be separated from Mr. Carter—the creator. Therefore, we are making a direct appeal to Mr. Carter to withdraw Griffin Bell's name for consideration of Attorney General of the United States.

Failing that, Mr. Bell, himself, should sense that his nomination has already been a divisive factor for the coalition of persons who elected Mr. Carter President and, therefore, should of his own volition remove himself from consideration.

The principle of a unified administration attempting to unify the country is, after all, more important than the person, Griffin Bell.

The moral inconsistency of Mr. Carter's nomination of Griffin Bell can be argued as follows:

The first job of any leader is to bring about unity in the midst of diversity. Lasting unity can only be retained around morally consistent principles, policies, programs, and people.

Only when all in the coalition of differing interests feel they are and will be treated fairly and will not have their individual interests compromised can unity be retained.

Mr. Bell's nomination has created shades of reasons leading to clouds of distrust. Mr. Carter promised that there would be no clouds over his administration, yet we presently have a rainstorm.

The unity and solid base of support which Mr. Carter enjoys in almost every other nomination has been split over the Attorney General post.

Mr. Bell's nomination is divisive because millions of black and white people are concerned about his moral commitment to protecting the rights of all Americans.

Second, the reason many persons are concerned about Mr. Bell's nomination has been well documented by others testifying before this committee—the barring of Julian Bond from the Georgia Legislature, his segregationist advice to former Governor Vandiver, his support of G. Harrold Carswell, his belonging to segregated private clubs and willingness to resign seemingly only under the most cynical and politically opportunistic circumstances, and his questionable views on busing.

I shall not detail them again. Mr. Bell's defense has primarily focused around the letter of the law rather than the spirit of the law. That makes many of us uneasy.

Third, Mr. Carter seems to have segregated his moral concerns. He has asked his Cabinet nominees to abide by high ethical standards when it comes to potential conflicts of interest involving financial matters. For that he is to be commended.

If his administration is to give leadership in the continued struggle against racism, then equally high standards of ethics must be applied to this area as well.

Griffin Bell—like another famous bell in this country—has a crack and does not ring true.

Fourth, Mr. Carter acknowledged last weekend, in commemorating the birthdate of Dr. Martin Luther King, Jr., that but for the life and work of Dr. King he would not now be the President-elect.

To admire Dr. King is one thing, but to follow him is another.

Griffin Bell has defended his past actions on the grounds that they were "moderate." Dr. King was not a moderate when it came to justice. He was an extremist for justice.

Moderation was too willing to tolerate the status quo—to drag its feet—to go slow. Dr. King understood that justice delayed is justice denied. There should be no anxiety about justice. We need one thoroughly committed to justice in the top position of the Department of Justice.

For Mr. Carter to elevate Dr. King and then nominate Mr. Bell is morally inconsistent.

There are other sons of the South—Ralph McGill, Judge Frank Johnson, Harry Ashmore, and others—men whose faces and feet pointed toward the future.

Fifth, President-elect Carter promised the American people the best and vowed an open administration, putting an end to the old smoke-filled, closed-door deals.

Griffin Bell is far from the best that this country has to offer and his nomination—against the advice of the highly respected United Nations Ambassador, Andrew Young, and other top Carter staffers—borders on cronyism.

Mr. Carter, the American people deserve leaders as good as our people and Mr. Bell is not that symbol.

Again, it is morally inconsistent to promise the best and try to give us Griffin Bell.

In conclusion, the Griffin Bell nomination and the doubts it has raised is a real test of the ability of President-elect Carter to face up to errors of judgment publicly and correct them with boldness and integrity.

This is the kind of challenge the late President John F. Kennedy successfully met when following the Bay of Pigs fiasco. He, upon being apprised fully of the facts, simply admitted that he had made a mistake and withdrew American military support for that invasion.

Our appeal to President-elect Carter is based upon the hope that he is capable of displaying the strength of character required for such a decision.

For this new administration to do so would be good for public confidence in the office of the Presidency as the moral leader of this Nation. Thank you.

Senator KENNEDY. We thank you very much, Reverend Jackson.

It is a short statement, but a very powerful one.

We heard very eloquent testimony earlier from Aaron Henry who is head of the NAACP and has been in Mississippi and living under the decisions that have been made by Judge Bell in the fifth circuit. He told us how he views those decisions and how other blacks and members of his organization do in the areas of desegregation of the schools and voting rights, as well as involving the employment discrimination.

He outlined in some detail the reasons and justifications for that position.

Your organization is a national organization but primarily based in Chicago. I know you have spoken in many parts of the country—in Washington, D.C., in the State of Massachusetts, the North and South and East and West—about equal justice.

I am interested how you, as a black leader in the Midwest, would view the potential of Judge Bell as an Attorney General. I wonder what assurances you would be interested in? What about the things that matter most to the people that you represent?

We have blacks living in major metropolitan areas. How about their concerns?

What can we draw from your experience? I know racism is not divided. Your concern, obviously, is the decisions which affect blacks in other parts of the country.

Mr. JACKSON. First of all, there would be concern about employment in the Justice Department.

Second, there is great anxiety about the enforcement of the Voting Rights Act.

Third, there is the commitment to one school system.

We know that fundamentally, southern moderation is a friend of the status quo, which is an enemy to progressive change.

To that extent, moderation of southern justice is what we had to struggle against in order to have a measure of freedom and options in the South.

One of my concerns, as I have viewed these hearings on television from afar, is the extent to which a rather unified black community came together around a rather spiritual inspired leadership of Mr. Carter and around concepts like trust and hope and integrity and faith and love and all the great religious language.

Now the same elements, which unified to be the margin of difference for his election, have now been split.

I think for any President who came in on the wings of a 92-percent black vote to run roughshod over the NAACP and the Congressional Black Caucus, Operation PUSH, and Julian Bond, is, in fact, a rather irresponsible gesture.

As to this notion about this kind of tribalism that so manifested itself here last week, I grew up and was born in South Carolina. I now live in Chicago and work throughout the Nation.

In the face of international racism, this North-South regional tribalism must not be brought to bear.

Mr. Bell is not being nominated to be the Attorney General of Georgia but of the Nation—49 States plus 1 which is 5,000 miles beyond the others. There are 50 States involved here. To that extent I think we have an obligation to look at the national ramifications of this man's basic attitude about race.

Senator KENNEDY. Reverend Jackson, let us return to the matter of trust and hope—how should we apply words like that to the assurances of Judge Bell to this committee which have been constantly referred to by my colleagues?

These assurances were in the areas that you have specifically referred to: full enforcement of the Voting Rights Act, employment within the Department of Justice in terms of minorities—blacks, Spanish speaking, Indians, women—the pursuit of knocking down various zoning ordinances and State laws that restrict housing, the willingness to support those efforts in the Congress when there are attacks on the Federal courts for limiting equitable remedies in terms of full rights, and for desegregation.

Mr. JACKSON. You see, what makes many of us anxious about this representation of his being a moderate is that it gives the impression that the Justice Department can afford to stand still. It will not go backward, but you can count on it not going forward.

But when one considers the housing decisions that must be made and the school decisions that must be made and the affirmative actions that must be made, the Justice Department must be on the offensive if you compensate for years of backwardness and injustice.

That is, again, why we contend that by virtue of the fact that this hearing has gone on for more than a week, that indicates the division of the house when we were promised unification. Around the other basic appointments, there is evidence that people are willing to unify but that this is a bit too much to bear.

Senator KENNEDY. Senator Bayh?

Senator BAYH. Reverend Jackson, I salute you for taking time from your rather hectic schedule. It is traditional that you have been willing to do so.

You have provided tremendously in the area of leadership to try to make it possible for everybody to have a full chance of securing freedom.

As I have said before, I have been perplexed by some of the actual actions or deeds, or lack thereof, of Judge Bell in the past.

One of the concerns that I expressed to him is that the record will show that we are indeed choosing an Attorney General of the United States.

He has been talking about being a moderate, which I suppose one could say is not an intolerable role for a judge to play.

I pointed out that as the Attorney General, there is no place for moderation in the pursuit of justice. If he is pursuing that responsibility he has to be an activist in the pursuit of enforcing our laws and seeing that equality and justice and liberty are available to all of our citizens.

It seems to me that there is no place for a passive Attorney General or a moderate Attorney General.

He agreed. He agreed that there was a different role.

The question that I guess we have to ask ourselves and answer is that those are words; we have to ask ourselves whether we can trust our man's integrity to pursue the role which he has admitted is the role of the Attorney General. I am concerned about the loss of faith.

You have sort of put your finger on something that is important, beyond the political fact of life. This unity did, indeed, elect a President of the United States. A large percentage of the minority people in this country saw, and hopefully do see, a President-elect Carter as a new day.

Words of assurance might have a hollow ring to some who have heard those words before.

Let me ask you this.

If you had reason to believe—what evidence do we have to say that the words are credible today? You have heard the words before. You have seen them ignored. I have reason to believe, and I believe this is an accurate assessment, that if Judge Griffin Bell becomes the Attorney General, then a man like Wade McCree will be put in the role of Solicitor General. I have reason to believe that every conceivable effort has been made, and I read this in the press, to get a man like Johnson to whom you give high marks, to be the Deputy Attorney General who would be given an important role in doing the kinds of things that we are concerned about, you and I. Does that kind of thing allay your mind at all or relieve your mind at all?

MR. JACKSON. It does not.

One of the things that impressed me so much about the campaign was that for a moment people went beyond numbers and high calculation and began to feel again. That is why the spirit of the campaign was so significant.

The track record of Jimmy Carter was not more substantial than the track record of Gerald Ford, but it was the revival of a spirit of hope and integrity and faith and trust and all that. Now we find a situation where there is a collapse of hope in faith and trust.

Furthermore, when one considers that the original nominees are names like Barbara Jordan and Judge Higginbotham, for those names to have been dropped, those names would not have brought about a

week of hearing and national division. Those names were dropped in order for, really, what amounts to kind of a cronyism to prevail.

In addition to the notion of cronyism, the record is under question and people are disillusioned with the nomination.

I would suggest that people like Clarence Mitchell have laid out in great detail the very legal reasons why we take another position. But the sum total of it all amounts to a cloud. Now the cloud has burst and it is raining.

We were promised that there would be no cloud over any Cabinet member's appointment, particularly over the area of Justice.

Senator BAYH. I think the two names you mentioned would certainly have served as a stimulus around which this seed of hope could have grown.

What I guess I'm after is that I can understand your collapse of faith and this kind of thing, but if we were right—and I frankly think we were right—who thought that President Carter was sincere and if Griffin Bell does get to be Attorney General, then I think some of us are going to have to hope and believe that people like Wade McCree or Frank Johnson or other people of different color who have had a track record of actually implementing will see that in addition to just campaign promises and nominations that these laws function.

You are not comfortable with that, and I understand it.

Could I ask you one last question.

I know we're under time restraints.

Have you personally had any relationship with Judge Bell? Do you know him as a man? Have you talked to him?

Mr. JACKSON. No; I do not know him as a person. I have simply observed his conduct. I have observed the reaction of people in whom I have a tremendous amount of faith and confidence.

One of my concerns, I must admit, Mr. Bayh, today, is just how seriously the Senate committee is taking this matter. Are we still in some honeymoon with President-elect Carter?

The reason I cannot afford to wait 100 days is because enough cement can be poured in 100 days to lock our ankles for another 4 to 8 years. I think some decisions must be made now.

My appeal to people like yourself is to make a decision now and not try to sweep this matter under the rug.

The notion of split justice, if this is rammed down our throats just because we don't have the power and just because we don't have the votes, the spirit of this will spill over into other areas of this administration.

Immediately it develops a protagonist and antagonist relationship amongst the elements that unify and make this administration possible.

I think that unless Mr. Bell is rejected the Democratic Party is unfair, I think that those of you sitting here, who would vote just to go along, would be unfair. I think you would have dealt a severe blow to us as a people.

Senator BAYH. Let me say that I can understand how you would look at it that way. I regret to say that I do not have any magic litmus tests that we can apply to integrity. Frankly, I suppose you don't either.

I can understand why anybody who has been through what Jesse Jackson has been through, or some other leaders, like Aaron Henry, or others like Clarence Mitchell, never really believed that anybody who was white could really give them a fair shake.

I think we can try. There is no way we can be as fully sensitized to it as some of you who are actually out there wearing the shoes and the skin and being subjected to the kind of abuse. I will say—

Mr. JACKSON. Mr. Bayh, let me make this clear. Several references have been made to me here as a black leader. I have not referred to anybody as a white Senator. My blackness is self-evident. I am not here based on ethnicity. I am here based on the ethics of the matter.

The question of having a more national representation in the Cabinet is a very serious issue. When one considers that the palace guard is basically Georgian and one considers that the key economic posts are controlled by fiscal conservatives and now the Justice Department by a racial conservative this matter is not just limited to our ethnicity. There are some ethical questions involved. Even the impression of cronyism is involved. But beyond all that there is reasonable doubt which has obviously set in.

Senator BAYH. But the major thrust of your presentation has been the 92-percent support of the black people for Mr. Carter. The only alternatives that you proposed to us as people who would have been an excellent Attorney General are both black people.

You and I usually go down the same road to accomplish the same goals.

Mr. JACKSON. It just happens that both the people I propose are ethical and excellent. [Laughter.]

Judge Frank Johnson, of course, is very white. I referred to people like Ralph McGill and Harry Ashmore from the south. They were very white. I do not have any basic reaction to people from the south. I was born and bred there. It is not a question to me of regionalism nor my own ethnic interests. There is a higher question involved. The people who have testified here have not been limited just to that concern. To me, it finally boils down to the reason why I really came today—that each person coming to the banquet day and making his own testimony. There are some of you sitting there who come out of a tradition of a request and pursuit for justice. Finally, where you stand publicly on the matter, is of more hope to us than just where Mr. Bell stands on the matter.

Senator BAYH. I appreciate that.

I take that to be a compliment to whom you may be referring. This has caused at least myself and several others to give this nomination a great deal of thought and to spend a tremendous amount of time here probing and prying and trying to come up with the right conclusion.

Thank you, Mr. Chairman.

Senator KENNEDY. Senator Mathias?

Senator MATHIAS. Reverend Jackson, I have to say that you really put it to us. It is important that you do, because this is what raises the bars and standards for this committee. Whatever happens as a result of the deliberations of this committee I think it raises the standards that the public will expect of the Justice Department. It raises the standards that the public will expect of government generally.

When you put it to us, though, I think we have to analyze the full measure of the kind of dilemma we have. You are absolutely right that this nomination has shattered a lot of traditional friends and allies. You mentioned Harry Ashmore, for example. He has not testified in this hearing. I have no direct communication with him. I have been told that he would favor Judge Bell's confirmation.

Eugene Patterson, former editor of the Atlanta Constitution, a distinguished journalist and a fine human being, has written an article which is in the record of these hearings. He favors the confirmation of Judge Bell.

So, the balance that has to be struck by this committee is a very difficult one. It is a very poignant kind of problem for us. Knowing you and Clarence Mitchell as we know you, and knowing the others who have testified, it is tough.

Mr. JACKSON. Mr. Mathias, when you consider the relationship potentially between the Justice Department and the FBI in the assassination probes which are now going, and when you consider that we just came out of a crisis around the Presidency involving the Watergate issue, there were really two things that pulled the Nation out of that crisis.

Part of it was a President in Mr. Ford who brought some measure of stability, but there was also the rather impeccable integrity and reputation of Mr. Levi who came to that office. Whether you take his views to be conservative or liberal, his integrity was impeccable. Really, it was the integrity of an Elliott Richardson during the weekend of the height of the crisis, so to speak. That department is too pivotal for us to move on it with reasonable doubt.

I get the impression from actions of people today, including Mr. Bell, that the decision has been made and they are preparing for the Inaugural.

That is kind of an insult. I don't think we should even go on further unless we are dead serious. At least for those who must remain, I think you have a major obligation to challenge Mr. Carter on a nomination that has divided the House.

It is not a matter of who wins. Anybody who wins will have a war with ashes. There can be no win in this situation. That is why we should have someone whose integrity and record is such that it does not bring about a division of the House.

Senator MATHIAS. You have touched on this earlier.

This committee has obtained from Judge Bell, as a result of hearing pressures and as a result of this process, a number of very important commitments.

For instance, there was one which I don't think has been mentioned specifically, which is his commitment to enforce the Open House Act, to insure open housing and removing zoning and other restrictive land use which are used to promote segregation in housing.

Are these impressive to you.

Of course, when I think of the commitments of this sort, I am reminded of a statement that is attributed to Aeschylus who said that "It is not the oath that makes the man but the man who makes the oath."

That is the nub of our problem.

Mr. JACKSON. You know, I am not great for quoting, Mr. Mathias. I am a country preacher, but I will share an observation: "Truth is

like electricity to the extent that it has to have a conduit." If you don't have a sound conduit you will have static and a fire and an explosion. A conduit through which these fine words come represent static.

The real inconsistency, however, of being in a private white segregated club 12 years after the public accommodations bill has passed and then leaving the club, not because ethical standards of Mr. Carter challenged him on that but because the press exposed him on the matter, and his very expression of reluctance indicates that the Confederacy is still very deep in this man's chest. He may be the Attorney General because we don't have the votes, but we could never trust him.

Senator MATHIAS. What about the force of example? You have Hugo Black and Lyndon Johnson, who have been brought up a number of times in these hearings. They were southerners who had deplorable records in civil rights. But they did change and brought a lot of other people with them. It is a little like they said: Richard Nixon was the right man to go to China, because with his history and his background, he was the one person who could change our policy on China.

If someone who has been a part of the Vandiver massive resistance movement comes to the Justice Department and, in fact, does provide a measure of leadership, can he bring more people with him than, let's say, a northern liberal who would not have those associations out of his past?

Mr. JACKSON. To me, the process of forgiveness, first, involves the person involved seeking forgiveness. Mr. Bell expresses no regret for his past. He is only reluctantly moving to the future under the most political opportunistic situations, the chance to be the Attorney General of the United States. To be sure that people who come from a long ways can deliver more——

I question coming out of a period of extreme distrust, extreme anxiety, extreme cynicism, where we move into a new day and a new candidate who symbolizes hope. Do we need to take the risk? I think it is unnecessary and a dangerous risk.

Furthermore, when the President indicated that he would find the best that the Nation has to offer, I am sure there is no doubt but that this man is not the best that the Nation has to offer. Is there any doubt in your mind that he's the best that this Nation has to offer?

Senator MATHIAS. We had Mr. Jaworski here the other day. He was a witness in favor of confirmation. He said: No; he was not the best. But he thought he was qualified. But not the best.

Mr. JACKSON. My case rests.

Senator KENNEDY. Senator Riegle?

Senator RIEGLE. Thank you, Mr. Chairman.

Just on that point, I think it is often the case that we do not get the Cabinet nominees or Cabinet officers who are the best for a variety of reasons. Not that that should be used as an excuse in this case, but as sort of a statement of fact.

I appreciate your testimony very much. I want to get into it in a second, although I want to get one thing clear for the record.

This is my first opportunity to serve as part of a confirmation process and also to serve on a temporary basis on this committee.

I just want to say with respect to the efforts of the committee to try to examine the record and cross-examine the witness in this case that I think quite a thorough job has been done.

The witness was placed under oath at the outset. There has been considerable cross-examination. I think a lot of it has been pointed.

I have heard, although I do not know if it is true or not, press accounts to the effect that no previous Attorney General has been here as long nor have the hearings gone on in as complete a length as has been so in this case.

This does not mean that we have done enough. I am not suggesting that. But it does seem to me that a good faith effort is being made to lay the record out as completely and fully as possible. I think it is necessary that that be done.

Having said that, I think there is something wrong in this case with this nominee. I think the fact that you are here and felt compelled to come and the fact that Aaron Henry was here and felt compelled to come and that Clarence Mitchell was here and others have come and there will be others here today, before one word is spoken in terms of what the case is that you bring, there is the fact itself that there is this kind of opposition. And that it is as significant as it is. This ought to tell us something. It tells me something. It tells me that there are some elements missing in this particular appointment.

I tend to agree with your general position that there is an inconsistency here, and that the Attorney General appointment by itself is a very powerful statement. When that name was issued and that individual was put forward, the power of that statement covers all 50 States which you referred to. I do not think that statement that was let loose is in line with what the campaign suggested and what people, rightly I think, expected. Not just in the black community but across the board. I am troubled about that, because I think there is an inconsistency here. The question is how that gets explained. Also, the question is the degree to which it is justified or whether or not there is a case strong enough, on the other side, to turn down a nomination to the Cabinet.

What is the unemployment rate among young people today in the city of Chicago?

Mr. JACKSON. Among young blacks it is about 42 percent. Among young whites it is between 19 and 21 percent.

Senator RIEGLE. So overall we are talking about something in the 35-percent range in terms of all young people in the city of Chicago?

Mr. JACKSON. Correct.

Senator RIEGLE. That is also true in the city of Detroit, in my State. It is true in most of the cities across the country.

What is the situation with respect to housing in the city of Chicago, especially with respect to people on the low end of the income scale?

Mr. JACKSON. Well, they refuse to build any more houses for poor people because the judge has ruled that they must be spread out and put into areas that are not traditionally black. Based upon that, the city has had the money held up. The judge, after several years, has had to circumvent that order and begin to build houses——

Senator RIEGLE. What about the cost of housing, apart from access to housing?

Mr. JACKSON. The cost has gone up while the unemployment has matched it.

Senator RIEGLE. How would you describe the level of hope in the community today among young people, whether they be black or white?

Mr. JACKSON. What?

Senator RIEGLE. How would you describe the level of hope in the future among young people in Chicago, whether black or white, in light of the job situation and in light of the housing situation and in light of the other problems that we know exist in the major urban centers?

Mr. JACKSON. I would say kind of a mixed bag, to the extent that many who had drifted into cynicism and drug addiction and kind of raw attitudes we were able to bring into this campaign and to register them to vote. They represent the vanguard of revived hope.

It is that same element now that had the revived hopes which now see those hopes being dashed with the way the amnesty question has basically been geared to upper middle income whites as opposed to everybody who resisted the Vietnam war.

The Judge Bell situation looks like an absolute commitment to the status quo which would be injustice, I would say, that would go back to the down side again.

Senator RIEGLE. So you are saying it was a temporary period where hopes were lifted because it looked like things might change and get better and now that is in jeopardy?

Mr. JACKSON. Correct.

Senator RIEGLE. That to me is a significant point. I do not know that under the strict rules of evidence, traditionally those kinds of things have been considered when weighing the suitability of a Cabinet nominee. But I do not think we have been at the same time before. We have not been at 1977 before. I don't think we have gone through the prior history, that we have recently.

I want to say to you again, as I said to Judge Bell when he was in the chair that you are in now, that I have been here 10 years on the House side, and I have seen six Attorneys General and two convicted of crimes and one waiting to go to prison now. We have come through the tortured history of the Vietnam war and the fight for justice in this country and other things. I do not think there is a more important Cabinet officer in the Cabinet than the Attorney General.

I think the message that goes with the appointment is, in some respects, as important as the individual who is named. It concerns me that the meaning that this particular appointment is carrying across the country and particularly in light of the fact that it seems not to be consistent with what was put forth during the campaign. I am troubled about that.

Mr. JACKSON. I also want to say that I really believe that those of us who are testifying against Mr. Bell may very well be punished for doing so. We will be in great disfavor with this administration. It is interesting and kind of paradoxical that those who put Mr. Carter in office are now expressing growing disappointment and those who voted against him are now feeling that they made the wrong choice. Something not good is occurring.

I also feel that if a President, during this period, can look at the NAACP and the Congressional Black Caucus and take an absolute commitment to a path that runs counter to their notions of justice for the disenfranchised people, then that is a level of arrogance that is very dangerous for us. That frightens me.

Senator RIEGLE. I have one other thing that I would like to cover with you. I also raised this with the witness who appeared just prior to you.

There has been reference from time to time to whether or not there is a smoking gun, because we have sort of gotten into the notion that there has to be a smoking gun out of the Watergate period, and so forth. I think there are times when the nominee perhaps ought to be rejected without there necessarily being a single smoking gun. I do not think that is the only kind of evidence that is sufficient.

What I am wondering about, and the part that disturbs me, is whether or not there is a pattern over a long period of time in a number of areas, case decisions, the Carswell letter, belonging to private clubs, the decision about leaving the private clubs and leaving the Federal bench, the role during the Vandiver years, and so forth, whether there is a common thread that runs through all of these different areas of controversy which have arisen which would suggest some kind of an insensitivity, an ingrained insensitivity, or a blind spot in Judge Bell that he might necessarily, without necessarily thinking about it, carry into the job or into anything he does.

Mr. JACKSON. When the Julian Bond case came up, it was not just that the judge voted against Julian taking a seat but the vitriolic language used was a manifestation of his true perspective. The reason why this matter cannot be confined to race is that for a job which is so national with such international ramifications, one cannot have a regional mentality. This job requires a national perspective, the running of justice throughout the entire United States. Unless one has some evidence of a national perspective—vision is more fundamental than techniques of law in this matter—just having the perspective of the many regions of the country and the heartland of the country and the diversity of the country and the heterogeneous nature of the country—we have had the kind of black-white notion with Mr. Bell in the South, but how does he relate to the Hispanic people? He has had no contact with them at all. How does he relate to people in Hawaii? I question the qualifications of this man, based upon insufficient perspective for the size of the job. We are still committed at this point to justifying how well he did in one garden or in a major plantation.

Senator RIEGLE. Along that same line, it seems to me that there has to be national competence. To me it is not enough that perhaps people out of the Atlanta experience and, of course, even the responses of witnesses there have not been uniform, because Julian Bond stands on one side of that and some others stand on the other side, but in terms of national competence, apart from regional competence and Atlanta area competence, I have not by and large heard much evidence presented along that line. But I hear national doubts, I hear some serious national skepticism. And to me that gets to the point, not just of someone's background but of someone's ability to perform. It seems to me that unless there is sufficient competence, on a broad basis for

someone who undertakes a job, it is very hard to get that job done, especially a job that requires moral leadership. I think this particular post does, as perhaps as much as any other Cabinet post.

So I appreciate your coming. I appreciate your comments, and we will weigh them carefully.

Senator BAYH (acting chairman). Are there further questions?

Let me ask one further question.

First of all, let me ask a favor.

If your concern is borne out that retribution is heaped upon you, who have had the courage to come here and speak out your conviction, I hope that some of us on the committee will be the first to know.

I hope and pray that that is not the case. I can understand your concern, but I hope you will be quick to let us know if any indication of this happens.

Mr. JACKSON. Our experience is that once this kind of heated situation occurs and people are divided into protagonists and antagonists, that is the basis for the enemy's list mentality.

As a result of this testimony, which has been split, some are ingratiated to the administration and some are on the outs. That is a very dangerous situation.

We have experienced the reaction enough to know what this represents.

Senator BAYH. I understand your feeling, but when this decision is made, if Judge Bell becomes the Attorney General, then I think it becomes incumbent upon all of us, those for and against, should understand that we need to pull together and put aside feelings of either advocacy or reservation and get on with making the system of justice in this country function the way you and I would like to see it function.

That cannot happen if they go down the witness list and say: OK. We're going to get old Jesse or Clarence or whoever else it might be.

I think I speak for a strong majority of this committee when I say that we would not stand for that kind of thing. I am not in any way suggesting that you don't have good reason because of past experience to feel that way, but you have a lot of allies here. We can keep that kind of thing from happening.

Are there further questions?

I am not sure that this is not presumptuous of me to take the mantle, but for the sake of time let us go forward.

Mr. JACKSON. May I ask you a question?

Senator BAYH. Certainly.

Mr. JACKSON. Would it be too much to ask that on the sum total of your evidence, at least in the case where there is a division of the house, that, first, those of you who come down on the nonconfirmation of Mr. Bell's side stand up and not cast a vote of unanimous consent, when there is not unanimous consent, but in fact will stand to your convictions.

Second, if that group loses, will those of you who vote in that fashion go to Mr. Carter before a vote is rushed through today and appeal to him based upon the division of the house to reconsider Mr. Bell's nomination and not just run this matter down our throats today?

Senator BAYH. I cannot speak for anybody else. I assume there will be an open committee session. Everybody will have the right to vote yes or no, depending upon his convictions.

Mr. JACKSON. I am just suggesting that the need in this instance, since we are seeking—in many instances, I get the impression that people are seeking quietness and not peace. Quietness is the absence of noise and peace is the presence of justice.

Unless the minority report in this instance, where it appears to be inclined, stands up, then we would not have a semblance of check and balance or a balance of power.

Our only protection ultimately in this administration is for Democrats to remain aggressive around principles and not unify simply around a label.

I cannot forget that we voted for Mr. Kennedy, over and against Mr. Nixon, in 1960. I think that was the right decision. But it required a march on Washington. It required a lot of Democrats standing up to move up toward a public accommodations bill.

I cannot forget, even as we congratulated Lyndon Baines Johnson about the voting rights bill, that when Dr. King received his Nobel Peace Prize and came back, at a White House reception, he asked Mr. Johnson about the voting rights bill for people who were disenfranchised in the South, he said that the Congress was too conservative and and it couldn't get passed. Dr. King did not belabor the case, but somewhere between Selma and Montgomery, Democrats began to stand up. This was to force a Democratic administration to pursue democracy.

Just as the march on Washington really gave Mr. Johnson a chance to be great, and he made the right decision, and just as the voting rights march gave Mr. Johnson a chance to be great, and he made the right decision, unless those of us who are basically voting Democrat stand up, we will not give Mr. Carter a chance to be great.

We must affect the alternatives under which he makes decisions. The longer that he can feel that he can turn diplomats into floormats he will not have the challenge to set up and make sound decisions in my judgment.

Senator BAYH. I would like to protect your right to make the assessment of what you think stand up means. I would suggest that you would not try to suggest that some of us, who have been out there trying to do some of these things, might not avail ourselves of different vehicles to stand up than you might feel were pertinent.

I do not think that it is just Democrats who stand up. There is a man right there [indicating Senator Mathias] who has been standing up, regardless of how we might vote on this nominee.

There are a number of things that are going to be the litmus test, letting the President know and letting the Attorney General know that we intend to continue a vigorous pursuit of justice.

I do not want to speak for my friend from Maryland, but he has been out there with several of us in the past. We do not intend to back away.

Senator MATHIAS. The Senator from Indiana is very kind.

I do not want to prolong this. I will not frame any personal justification, but I do think this struggle is a bipartisan one. It is important that it has been.

For all of the rhetoric of the 1960 Presidential campaign, the first civil rights bill was introduced in the Congress and came along 2 years after that campaign. It was a public accommodations bill. It was introduced in the House of Representatives by Congressman McCullough from Ohio, Congressman Lindsey from New York, and Congressman Mathias from Maryland.

And I think the strength of the campaign was that it was a strong bipartisan thing, and I think that the strength of the civil rights movement in this country and protection of civil liberties and civil rights has got to be a strong bipartisan movement.

But I think that your question puts it in very stark perspective, the job before us. And this is an interesting job. Because under the Constitution the appointed power in this country is divided into two steps: One, the nomination and the other the confirmation.

Now the nominating power is a broad and plenary power. The President, as he looks across the 215 million Americans, can choose any one of them to nominate. And he can apply whatever tests he chooses to choices that he makes in the nomination.

When that nomination comes to us for the balance of the appointive act, we have a very restricted and limited choice. We do not look out across 215 million Americans and say whom we would choose. We have to say: Is the President's nominee qualified, a much more restrictive role.

I hear what you are saying. And I think your suggestion is an important one. But I want you to understand the exact role that we play in this.

Mr. JACKSON. I don't want you or Mr. Bayh or Mr. Riegle to feel that my direct challenge is intended to be an insult or an expression of disrespect.

Senator MATHIAS. I don't take it, I don't look upon it as a challenge. I look upon it perhaps as an exhortation but not as a challenge.

Mr. JACKSON. Yes. But my point is that people vote for the President, but they also vote for their Congressmen and Senators. That is part of the genius of the system, checks and balances.

Unless people at your level stand up to protect us at that level, we will not be protected.

I think the reason why, as I have watched Parren Mitchell and Clarence Mitchell in the last few days, I would not go to this length in testimony, but there is a sense of desperation setting in in our community.

I got the impression that this long, cold winter, once it thaws out, is going to create a long, hot summer unless some changes take place that we do not at this point see any evidence of. But we heard evidence of this back in November and in the fall of the year.

We are victimized here by some rather radical shifts since this election. We heard full employment all day and all night during this election. Now we find ourselves with all this talk about tax cut and people who have no jobs and, therefore, they do not have any taxes to be cut.

We heard full employment and Hawkins-Humphrey bill every day and every night, and now we are talking about 5 and 6 percent unemployment that can be tolerated for the next 4 years. We heard that blacks, based upon our investment in the Democratic Party, that we

would be appraised based upon our investment in the Democratic Party and not just in the general population.

So there was a commitment in Charlotte, N.C., to the 25-percent figure as a round figure. Now that figure has shifted to 10 percent. There has been a rather major shift.

The talk was about our being able to function vertically and horizontally in this administration with equity and parity. We end up with 1 out of 11 Cabinet members. We have one Cabinet member out of Mr. Ford and gave him almost no votes and got a substantially more significant Cabinet post out of Mr. Ford.

I sit here this morning with a measure of frustration, because we had less than 2 million black voters in 1960 and got a Cabinet member over at HUD and 16 years later we've still got a Cabinet member over at HUD but more than 8 million votes. The black vote has been devalued.

We are concerned about this matter. I am appealing to you to do that which you have to do—that is, to get the message across as some of us cannot be heard through the channels this formal and legal.

We cannot express it in the suits. We have to express it in the streets. This is not a threat. It's a promise. We have no choice but to represent the voices of the unheard.

Senator MATHIAS. Thank you very much.

Senator BAYH. Thank you, Mr. Jackson. We appreciate your presence and testimony.

Our next witness is Dean Monroe Friedman, Dean of Hofstra Law School.

TESTIMONY OF MONROE FRIEDMAN, DEAN, HOFSTRA LAW SCHOOL

Mr. FRIEDMAN. Thank you, Mr. Chairman. I am grateful for the opportunity to appear here this morning. I apologize to the committee that I did not have a written statement to submit. I was able to arrange to be here at 5 o'clock last night after my secretary had left, and I, therefore, could not prepare a written statement.

I would like to begin, for the sake of candor, by stating that I am opposed to Mr. Bell's appointment on grounds other than those which I am here today principally to discuss, that is, his conduct, his ethical conduct in judicial office.

I agree with President-elect Carter that the Attorney General, above all others, must be removed from politics and independent of the White House. I agree with Mr. Bell himself that the Attorney General himself is a symbol of equal justice before the law.

Senator MATHIAS. Mr. Chairman, may I interrupt a moment?

Senator BAYH. Certainly.

Senator MATHIAS. You said you are going to testify on the question of judicial ethics. Perhaps it might be useful to establish what qualifications you have as an expert on that subject. I do not think we hold strict standards in this committee as a court of law would, but I think if your testimony is to have force, you ought to establish yourself.

Mr. FRIEDMAN. I understand.

Senator BAYH. I say this, Dean, and I say it without any reference to any particular individual, but unfortunately the jurors who sit in

judgment on this question have traditionally not required the same standard of themselves as they require of others.

Mr. FRIEDMAN. Senator Mathias, I am the author of a book on legal ethics, "Lawyers' Ethics in an Adversary System," which among other things has received an American Bar Association Gavel Award Certificate of Merit. I am a member of the Legal Ethics Committee of the District of Columbia Bar and for 2 years served as chairman of that committee. I am former chairman of the Federal Bar Association's Committee on Disciplinary Standards and Procedures. I am currently chairman of the Society of American Law Teachers Committee on Professional Responsibility.

I have also qualified as an expert witness on legal ethics in both Federal and State cases. I can submit additional material at a later date if you like, but I hope that will suffice for the autobiographical aspect for today.

As one who voted for Mr. Carter for the President, therefore, I was dismayed at the appointment—at the nomination—of Mr. Bell whom I consider to be singularly inappropriate on both President-elect Carter's standard and on Mr. Bell's own standard of the kind of person we should have for Attorney General.

I did not, however, seek the opportunity to testify in that regard until I learned yesterday about Mr. Bell's role in the *Biscayne Bay* case.

I will discuss that in more detail later, but my conclusion is that he violated both Federal law and judicial ethics and demonstrated an insensitivity to questions of conflict of interest which President-elect Carter has properly emphasized as being one of our most important concerns today.

If you will, I think there is an element in this testimony of a smoking gun as distinguished merely from an expression of political viewpoint which, incidentally, I do not intend to deprecate.

The standards for disqualification of a Federal judge are found in four principal sources: One is 28 United States Code, section 144 and section 455; another is the Code of Judicial Conduct principally in section 3 (c) and (d); the third is in Judicial Decisions, especially of course those of the Supreme Court of the United States; and the fourth are in the opinions of the Advisory Committee of the Judicial Conference.

Justice Frankfurter in *Public Utilities Commission v. Pollock* set forth what is accepted as a classic statement of the rule and standard of disqualification of Federal judges.

He wrote that:

A judge should disqualify him or herself if there is ground for believing that unconscious feelings may operate in the ultimate judgment.

Then he extended it beyond that, not just ground for believing that unconscious feelings may operate in the ultimate judgment, but added:

Or the judge must disqualify him or herself where the circumstances may not unfairly lead others to believe that such influences, unconscious feelings, are operating.

The guiding consideration—

He wrote:

Is that the administration of justice should reasonably appear to be disinterested as well as to be so in fact.

Justice Black in perhaps a leading case on this subject, *Commonwealth Codings Corporation v. Continental Casualty*, used similar language. He said:

Any tribunal permitted by law to try cases and controversies not only must be unbiased but almost must avoid even the appearance of bias.

In that case, *Commonwealth Codings*, there was a dissent, significantly, by Justice Fortas. Justice Fortas relied in part in that case, justified his dissent in part, on the grounds that the lawyer whose client was affected adversely by the arbitrator's conflict of interest, the lawyer had admitted that if he had known the facts before the case was heard, he would not have moved to disqualify the arbitrator in that case.

Nevertheless, of course, the majority held that the case had to be reversed.

In view, however, of the emphasis that three justices have placed on the position of the lawyer in the case with regard to moving for disqualification, I called last night a lawyer who was involved for the plaintiff in the *Biscayne Bay* case. I asked him whether he would have moved for disqualification of Judge Bell had he known the facts relating to the conflict of interest. He told me not only did he feel very strongly about it and was confident that he would have done so, but that he was even more certain that his client had extremely strong feelings about that matter and would have made such a motion.

Of course, they were precluded from making, that is they were deprived of that opportunity because of the lack of candor by Judge Bell with regard to the conflict.

The conflict is in two parts, and in my judgment either one of them is sufficient to have justified disqualification and indeed the Judge should have done so on his own motion and certainly, I believe, would have been required to disqualify himself in response to an appropriate motion under either section 144 or 455.

Senator BAYH. Dean Friedman, on the lack of candor question, was the membership in segregated clubs raised at the trial? Was the judge asked if he belonged?

Mr. FRIEDMAN. Not to my knowledge, Senator Bayh.

Senator BAYH. I am anxious to hear your testimony, having been involved before with that question and having read several times the *Commonwealth Coding* case and others. I have had mixed feelings about this issue and I am anxious to see where you are going, but I wanted to see when you said "lack of candor" if the judge really had been asked that question.

Mr. FRIEDMAN. To my knowledge he was not asked by the parties or lawyers in that case, but as I will discuss more fully later, he had an outstanding obligation to reveal aspects of his relationships to the clubs and, indeed, that obligation was of longer standing than I believe has been suggested to the committee thus far.

I am also aware, Senator, that in your case, if not the other Senators as well, that I may be teaching my grandmother how to suck

eggs in talking about judicial ethics. I know that there are other experts in this room besides myself.

Senator BAYH. I am not familiar with your grandmother's technique for sucking eggs, but I am very familiar with your expertise in this area. I do not put myself in the same position as your grandmother, as expert as she may have been in that area. [Laughter.]

Mr. FRIEDMAN. The applicable statutes are sections 144 and 155. Those provide as follows:

Section 455(a) which is of title 28 provides that the judge "Shall disqualify himself in a case in which the judge's impartiality might reasonably be questioned."

Note that that is a broad standard. It is a case in which the judge's impartiality might reasonably be questioned.

That disqualification can be waived under subsection (e) of 455, provided that it is preceded—that is, the waiver is preceded—by a full disclosure on the record of the basis for disqualification.

That is the version of 455 which we now have which was adopted in December 1974.

Senator MATHIAS. Dean, I do not want to interrupt the orderly progression of your thoughts, but I have an instance that I want to put to you which seems to me to be on the point.

In January 1958, a desegregation suit was filed in Atlanta. In November 1958, Judge Bell and other lawyers traveled to Mississippi and to other Southern States to investigate the techniques of massive resistance. On February 3, 1959, the Georgia Legislature passed a package of massive resistance legislation which has been the subject of considerable testimony and which the lawyer's group, including Judge Bell, apparently in whole or in part recommended.

On July 13, 1959, Governor Vandiver appointed a group of what were described in the Atlanta Constitution as segregationist lawyers and called them into a meeting at the Governor's mansion to discuss the situation. There is a rather unique piece of evidence of that meeting which has been introduced into the record. It is a memorandum which discloses the views that were expressed by each of the participants in that meeting, including Judge Bell.

Finally in this chronology there is June 17, 1963, Judge Bell, now elevated to the bench, cast the deciding vote and wrote the decision approving the Atlanta plan which was drafted in 1959.

With that chronology, would that chronology suggest to you the kind of interest to which the statute addresses itself?

Mr. FRIEDMAN. Yes; Senator, it does. Indeed, I would say that the matter that I am addressing myself to now with respect to the *Biscayne Bay* case and the construction of the Federal statute, might be subject to controversy in terms of interpretation of the language and particularly if one is not aware of the cases and other authorities interpreting that language.

If I understand the facts correctly, this would be a relatively easy judgment to make of impropriety on the part of a judge.

It is covered in two places which are relevant. One is canon 3(c)1(b) of the Code of Judicial Conduct which says:

A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned.

I think that is enough there but then it goes on to say:

* * * Including but not limited to instances where he served as lawyer in the matter in controversy or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter. * * *

That provision of the code is subsequent to the events——

Senator MATHIAS. That's the point. We ought to establish that the statute was enacted later.

But what about the canon?

Mr. FRIEDMAN. Well, although that provision was adopted subsequent to these events, I think it is generally recognized that that is a codification of long-standing prior authority with regard to whether a judge should sit on a case in which he or she was previously involved. Perhaps more to the point, because it was on the books at the time of the conduct you refer to, is the former provision section 455.

I have been referring to and will be discussing the amended 455 which was adopted in 1974. But prior to that the provision was a rather simple and direct one as far as this issue is concerned. It says:

Any justice or judge of the United States shall disqualify himself in any case in which he has been of counsel.

If I understand the narrative, Judge Bell gave advice, such as "in my judgment it would be a bad thing for us to appeal because it could hurt us." Presumably he was talking to somebody who was in a position to make the decision whether to take the appeal. Otherwise, that language would appear to be in context nonsensical. Therefore, it seems to be beyond question that he was acting "of counsel" with respect to that appeal.

Senator HEINZ. Will the gentleman from Maryland yield?

Senator MATHIAS. Yes.

Senator HEINZ. Are you referring to 28 U.S.C. 455?

Mr. FRIEDMAN. Yes; Senator, but prior to the December 1974 amendment because, as I understand, Senator Mathias is referring to events prior to that date.

On the other hand, the *Biscayne Bay* case, on which Judge Bell sat with the court, was subsequent to December 1974, and therefore my principal remarks are directed to the amended 455.

Senator HEINZ. I understand.

Let me ask this. Do you know when the language "has been of counsel" was first written into 28 U.S.C. 455?

Mr. FRIEDMAN. I am sorry to say I do not. The Xerox copy that I have indicates—no, I cannot answer that.

Senator HEINZ. I think we should determine this. I suffer from Xerox-itis here just like everybody else. I do not have an indication on my papers as to when it was amended. It could have been in the law for a period of time before 1974 or 1973.

Mr. FRIEDMAN. That is for sure, Senator. There is no question about that.

Senator HEINZ. Thank you, Mr. Chairman.

Senator BAYH. Let's ask the staff to see if we can't get some benchmarks here, at least as far as the statutory changes are concerned. We are talking about statutes and canons. To lawyers and judges, it seems to me that they should mean the same. But according to law they have not always meant the same.

Senator MATHIAS. I will stop interrupting the dean so he can get on, but I think it is important to set the context of this thing.

Judge Bell, when the Judicial Canons of Ethics of the American Bar Association were read, I believe by Senator Heinz, said that he didn't feel the canons of the American Bar Association applied to judges. I do not want to misquote him. He said at least the judges were not bound by them. I think that is part of his answer. Senator Heinz?

Senator HEINZ. I think you are right, Senator Mathias. I then pressed him as to whether the ABA recommendations, as adopted by the judges' organization, were then applicable. I believe, in fairness to Judge Bell, he said yes, he felt that if they had been adopted by the Judicial Conference that they had applicability.

But then my recollection is that he did not feel that the situation involving the *Biscayne Bay* case was in any way covered, even though I tend to disagree with him on that point.

Senator MATHIAS. That was just the groundwork which I thought might be useful.

Senator BAYH. I have to say as one who has been more than passively involved in this question in the past, right in this hearing room, that I think the dates, particularly as far as the statutory divisions in which this committee participated, are important.

As I recall, back when this committee first got involved in the Haynsworth nomination, there was a significant split among the circuit as to what standards should be established.

Senator MATHIAS. But the one thing we are agreeing on now is the question of being "of counsel" was in effect as of the pertinent period that we are talking about?

Senator BAYH. I don't know whether that had been put in there or not.

Mr. FRIEDMAN. I can only say I believe that is the case.

Senator BAYH. When the Haynsworth matter was before us we had a situation where the fifth circuit had one rule, the fourth had another one. I think both of those circuits were in the minority, but Judge Haynsworth did not live up to the rule of his own circuit. As I recall one time the statute clearly left it up to the judge to decide whether there was an appearance of impropriety which, to this Senator, was the wrong way to go. We have made some changes in that.

Why don't we let the dean make his case and then see where that leads?

Senator HEINZ. Mr. Chairman, on the basis of extensive, thorough legal research that I have just done in the last 30 seconds, it appears that 28 U.S.C. 455 has been on the books since 1948.

Senator BAYH. The staff tells us here that it was December 5, 1974, that is the part in question. I must say that I should know because I was involved in it, but I could not look on the calendar and tell you when it hit.

Mr. FRIEDMAN. The December 5, 1974, date is, of course, the present provision.

Senator BAYH. Yes; the statute that was passed.

Why don't we let the staff together determine this if the Senator doesn't mind, unless the Senator is absolutely certain. I am not absolutely certain that he is wrong, I will tell you.

Shall we let the dean proceed here?

Mr. FRIEDMAN. Thank you.

It may be open to controversy as to what those phrases mean, cases in which the impartiality might reasonably be questioned or cases in which the judge has a personal bias or prejudice. I am not sure that I read the language of section 144 a moment ago.

That relates to a case where the judge has a personal bias or prejudice "either against a party or in favor of an adverse party in which case the disqualification is absolute. The judge shall proceed no further with that case."

This means that if such a motion is made the judge's disqualification is absolute.

Some of that language, however, particularly personal bias or prejudice against the party, might be subject to strict rather than broad construction. It is interesting to note, therefore, the way that language and similar language in the Code of Judicial Conduct and other sources have been construed consistent with the language that I read earlier from Justice Frankfurter's opinion and Justice Black's.

We had, for example, in *Berger v. United States*, a case in which a German-born defendant complained about anti-German statements by the judge. These were statements against a class of which the party was a member. It was held that the judge had to disqualify himself. The Harvard Law Review, in commenting on that case, noted that:

in interpreting the language we should consider in part the subject matter of the expression as related to the subject matter of the law suit.

They go on to note—

Where bias against blacks is suggested by a white judge's prior expression of opposition to racial integration he may be disqualified in a school desegregation suit

and so on.

As we know, actions speak louder than words. The reference here is to a judge expressing opposition to racial integration and the fact that in the view of the Harvard Law Review authors the judge must be disqualified under those Federal statutory provisions in a desegregation case.

What we have in *Biscayne Bay* is a parallel situation. The issue was whether what was claimed to be a private club would maintain its segregated status of exclusion of blacks and Jews.

Judge Bell, in actions that spoke louder than words, had clearly taken a position, not just in words but in his very lifestyle, in opposition to desegregation of such institutions.

Nevertheless, he sat on the case.

In addition, compounding that rather substantially, as I understand it from the transcript, Judge Bell was, at the time, receiving free membership in one or more such clubs, and therefore he was beholden to them in a financial way giving him an incentive not to displease them in a holding that could very well affect their interest, their actions of an identical sort.

On either of those grounds—and certainly on both of them therefore—it seems clear to me that Judge Bell should have disqualified himself, at the very least that he should have put it on the record and given the parties an opportunity to consider whether to move for disqualification or whether to follow the statutory and Judicial Code procedure of waiving that disqualification.

Whether illustrations can be given of the way in which personal bias or prejudice concerning a party, or phrases to that effect, had been construed to mean demonstrated prejudice against a class, particularly if the case involves a related kind of activity.

The Harvard Law Review, for example, suggests the case of a judge sitting in a draft matter in which his son is not involved, but in which the interpretation of the draft regulations will affect, or might affect, the draft status of the judge's son.

In that case, although the connection is indirect and the son is not actually a party, that situation is submitted as a prototype of the case in which the judge should disqualify himself or herself.

Similarly, the Code of Judicial Conduct refers to the case in which a judge has stock in a bank that is not a party to the case involving another bank, but where the interest of the bank in which the judge holds stock could be affected by the legal rules set down in the particular opinion.

Again, this is suggested as a classic instance in which the judge should disqualify him or herself.

In addition, we have the cases in which Judge Haynsworth was involved and on which a number of members of this body took positions.

In *Darlington Manufacturing v. N.L.R.B.*, Judge Haynsworth was part owner and director of the company which was doing business with a party to the lawsuit. That is the company of which Judge Haynsworth was part owner and director, was not a litigant before the judge, but only had business relationships with the litigant, and that has been cited by many authorities as an instance of improper conduct.

There were three other cases in which Haynsworth held stock from the parent company of the party, and there was the *Brunswick* case in which the judge held stock in a party but, as has been noted by Justice Rehnquist, the judge's financial interest through that stock ownership would have been affected by no more than a few cents as a result of these decisions.

Nevertheless those, I believe it is safe to say, are recognized as classic instances in which a judge should disqualify him or herself.

There is also, to put it into a different kind of context, an analogy here to disciplinary rule 5101(a) of the Code of Professional Responsibility. That provides that:

A lawyer cannot represent a client unless the client consents to the representation after full disclosure in a case where the exercise of the lawyer's professional judgment reasonably may be affected by his own financial business property or personal interest.

If you imagine, for example, that Judge Bell was a lawyer in private practice and Mr. Golden, the plaintiff in the *Biscayne Bay* case, came to him, then Judge Bell would be under an obligation—to represent him that is—Judge Bell would be under an obligation to say:

Mr. Golden, I might be interested in representing you, but first there are some facts I think you should know. First, I am a member of three clubs which have the identical kinds of practices which you want to attack in this lawsuit.

I think it is reasonably clear what Mr. Golden's position would have been at that point, and certainly even more clear when Mr. Bell the lawyer says to Mr. Golden, the potential client:

* * * And in addition, one or more of those clubs are giving me free membership.

That seems to me to be the kind of case that the code of professional responsibility is talking about in which the lawyers exercise their professional judgment reasonably may be affected by his own personal interest.

It would seem a fortiori that if a lawyer could not properly represent a client in those circumstances without full disclosure and a waiver, then a judge should certainly not sit on a case in those circumstances.

The Code of Judicial Conduct was adopted for the Federal courts by the Judicial Conference of the United States in 1973. That is also relevant to the *Biscayne Bay* case.

Canon 3(c)1 says that—

A judge should disqualify himself where his impartiality might reasonably be questioned.

Again there is a very broad proposition concerned with appearances as well as impropriety in fact.

Then, included under that standard but not intended to limit it, are personal bias or prejudice concerning a party and any other interests that could be substantially affected by the outcome of the proceeding in addition financial interest on the part of the judge however small.

Under Canon 3 (d), instead of withdrawing in those circumstances, the judge can disclose on the record the basis of disqualification and get an agreement of all the parties in writing without the judge's participation. Even that rather high standard and difficult standard for waiver of disqualification does not apply to the case where the judge has a personal bias or prejudice concerning a party which, as we have seen, can be a class thing and not an individual bias in the more narrow sense.

In that event, the waiver provision is not even applicable, that is even if all the parties agree the judge is still required to disqualify him or herself.

The reporter, who in the preparation of the Code of Judicial Conduct, comments—

Any conduct which would lead a reasonable man knowing all the circumstances to the conclusion that the judge's impartiality might reasonably be questioned, is intended to be the basis for disqualification.

There was a case in which a justice of the peace received a small part of the fine, or a small fine, in cases in which he found defendants guilty who appeared before him.

The Supreme Court held that even the slightest—that was *Toomi v. Ohio*—pecuniary interest was sufficient to taint the judgment of the court. The reporter to the code of judicial conduct also notes that *Commonwealth Codings*, to which I referred to earlier, clearly indicates that *Toomi* is not to be limited to the specific fact situation, but is to be broadly applied.

Similarly, Canon 3 (c) 1(c) has been described as having a broad sweep.

We have also both statutory and code of judicial conduct provisions which require a judge to report any gift that is of a value greater than \$100.

There has been some discussion here, I understand, with regard to the applicable date of that provision. There is an Opinion No. 47 of the Advisory Committee of the Judicial Conference which does have a reference to the obligation of the judge to disclose the value of such gifts on a form that is provided for that purpose.

The reference is in an opinion, an advisory opinion, that was rendered in 1975. The colloquy suggested that Judge Bell had only one occasion for filing after that date and so that his failure to reveal the gifts from the clubs was not, therefore, as major as it might have been.

In fact the rule was clear well prior to 1975. The reference in Advisory Opinion No. 47 is an afterthought at the end of the opinion. That was not the subject matter of the opinion. The opinion dealt with the propriety of accepting such a gift, not the question which nobody thought was controversial, whether if one did accept such a gift it had to be put on the record.

In fact, beginning in June of 1970, Federal judges were required to file a form setting forth such gifts.

Under Roman numeral II of that form, the judge is called upon to:

List and describe separately each gift received by you during the period, which had a value in excess of \$100. For each gift state the donor and your best estimate of its value. If none write "none".

Judge Bell either failed to file the form for a period of 5 or 6 years semiannually, which means 10 or a dozen such forms, or else in filing them he falsely stated "none" when there were in fact gifts to be stated.

In the transcript, at page 87 Judge Bell apparently was asked about his failure to comply with the rules promulgated by the Judicial Conference. His response was: "I am subject to the Judicial Conference to the extent that I am willing to comply."

"I am subject to the Judicial Conference," that is to provisions to guard against conflict of interest on the part of judges, "to the extent that I am willing to comply."

What Judge Bell was saying in those words, it seems to me, has to be only one of two things: First, that he is setting himself above the rules of law. This is something which I believe we have seen more than enough of in recent times; or he is saying, I got away with it, didn't I?

In either event it seems clear to me that questions are raised by that response, by that attitude toward, with respect to President-elect Carter's conflict of interest guidelines.

Senator BAYH. Excuse me, Dean, did you read the rest of his testimony there, where, as I recall, and correct me if I am wrong, the judge laid down the basis for his statement? It had to do with a number of other judges, or a couple of dozen other judges, refusing to file any form or report at all on the basis of principle, but that he—my memory is hazy, but I don't believe that what you read was all the judge said about it.

Mr. FRIEDMAN. No, Senator, it is not all. He does say that some judges have refused to comply and filed nothing at all. He says that he did file, although only on the 1 occasion of the 10 or 12 that he should have. And he concedes that in his filing he did not reveal the value of the gifts from the country club. I am not persuaded myself,

and I imagine that you are not either, by the suggestion that everybody does it or some other judges did it, that is, violated the same rule. Those other judges are not nominees for the position of Attorney General of the United States. The propriety of their conduct I know nothing about. If they did indeed fail to file, they are in violation of applicable rules and in the same position as Judge Bell.

The only difference, perhaps, being that there is a suggestion in what he says that they were acting as a matter of principle, whereas his failure or refusal to file was not based on principle.

Senator BAYH. I do not think that is what he inferred. I do not think that is what he said. Frankly, I think he should have filed, I am troubled by this, but I think if we are going to assess the weight we have to consider everything he said and we also have to consider other matters that I would like to discuss with you when you get through. Excuse me for interrupting.

Mr. FRIEDMAN. That is quite all right.

I certainly agree with you that if other language qualified this language in any significant way it would be unfair to quote it, but I do not see any unfairness. Senator, in quoting that sentence. It is pretty clear to me what he is saying and there is nothing that appears to me to justify or to mitigate or to modify what he says and what he means when he says: "I am subject to the Judicial Conference to the extent that I am willing to comply."

Senator BAYH. I do not want to put thoughts in his mind because this whole club matter has troubled me in ways that go deeper than that. But I would think the judge is probably a lot more sensitive to this fact than he was at the time he made some of the statements, which seemed to me to indicate a lack of familiarity with what some people in some parts of the country really are concerned about as far as the membership in segregated clubs is concerned.

As I recall, and I don't think it was in that part of the testimony, someplace in the testimony when the club issue was discussed it was brought to our attention that the judges in the circuit, 15 or whatever the number was in the circuit, had considered this matter and voted on it. They voted on whether to exclude themselves as a matter of principle. They had voted not to and that they had the right to free association.

Frankly, I would have voted the other way. I am just trying to put this in the environment in which we find the judge making these decisions.

Second, as I recall, although my memory is hazy about this, the question of disqualification and membership in the club was left to the judge in question unless it was the club of the judge.

I would feel much more comfortable if the judge, No. 1, had not belong to segregated clubs because he was a member of the Federal judiciary or a citizen of the United States. If he had disqualified himself I would have felt much more comfortable.

Go ahead.

Mr. FRIEDMAN. I would like to add also the fact which I think is of enormous independent importance, and that is that he was in a position of being financially beholden to clubs that were situated similarly to the defendant in a test case.

Senator BAYH. Excuse me. I am not sure what you have there, but the staff advises me that we have records of Judge Bell having filed his financial report with the Judicial Conference. We have copies of those. If you would care to look at them you can.

Mr. FRIEDMAN. I would like to.

I was shown a transcript which suggested that he had filed only once after opinion No. 47 came out. If I was misinformed, I apologize.

Senator BAYH. I have been in and out of the hearing room with other responsibilities and the staff informs me that he did file. One time he was late in filing. The staff informs me that he was 1 day late. That material is in the record if you would care to look at it.

Mr. FRIEDMAN. I think, then, that it would be very interesting to examine, Senator, because it does require that either these items be listed or, if none, that he write "none." I think it would be significant to find whether it was an act of omission or commission when he failed to reveal that information.

Senator BAYH. As I recall, the Judge has said that he did not consider this and did not file it; technically, I suppose he should have.

Go ahead. I will try to stop interrupting.

Mr. FRIEDMAN. I am about to wind up. That is all right.

I was one who was extremely pleased with the conflict of interest guidelines which President-elect Carter has promulgated. But just as the guidelines of the Judicial Conference are not really enforceable, or enforced, certainly not subject to criminal sanctions, so the guidelines which President-elect Carter with considerable fanfare has promulgated are not subject to ordinary kinds of enforcement.

Therefore, this cavalier attitude by Mr. Carter's nominee for Attorney General, the chief law enforcement officer, seems to me to raise serious questions as to whether the conflict of interest guidelines that have been laid out for executive officers means what they say, or whether, in view of Mr. Bell's position and Mr. Carter's apparent regard for Mr. Bell, we should take the conflict of interest guidelines as so much public relations eyewash.

It seems clear to me, therefore, that not only because Mr. Bell's nomination is inconsistent with the standards set by the President-elect and by Mr. Bell himself, but because of serious improprieties in his performance on the bench, that Mr. Bell should not be confirmed as Attorney General.

Senator BAYH. Dean, you raise a troubling question. I have tried to examine this. You provoke me to think further on this. I have tried to examine it from the standpoint of total objectivity, trying not to rationalize and trying not to establish a double standard.

In most cases there is case law to what the statutes and the canons of ethics actually mean as interpreted by jurists who put the final print on it. Are you prepared to say that those cases all involved what could reasonably be interpreted as clear pecuniary interest, be it ever-so-small benefits from stock or business relationships as in *Commonwealth Coding* or the *Toomi* case, or pronouncements by the judicial officer involved which really put him in a proponent position on a given issue?

Mr. FRIEDMAN. Certainly, Senator, most of the cases that have come up are of that sort, but well recognized is the non-financial interest category, and I suppose you have it in the most extreme form, that is

the nonfinancial interest, in Justice Frankfurter's opinion in *Public Utilities Commission v. Pollock*. There Justice Frankfurter had no pecuniary interest at all. The issue was whether the bus system could be enjoined from piping music, what they considered to be music, into the buses to the disapproval of some riders of the bus.

Justice Frankfurter disqualified himself from sitting on that case in the Supreme Court of the United States on the grounds that he himself had to ride that bus, and therefore could not be objective and impartial with regard to an injunction against the music or noise, as one would have it.

As I say, that may be the most extreme form of nonfinancial interest that we have, but it rather illustrates the point that it need not be a pecuniary interest at all.

Senator BAYL. Let us hope and pray that someday the time may come when all of us can meet the standard set not only in that case but elsewhere by Justice Frankfurter. I have to believe that may be a little severe as a test for a judge and particularly for an Attorney General. That is a matter of judgment.

This was a long, involved development. Congress finally acted, and I am not sure they clarified it. At least we put it on the record. We are talking about personal bias and prejudice concerning a party who has personal knowledge of a disputed evidentiary fact and that impartiality may be reasonably questioned.

We took away the easy out of waiver that existed before. I think John Frank, from Arizona, who had been very much involved in this, testified—and I think he is right—that the judge asking the parties to grant him a waiver or giving them the option was like a velvet glove with a cast iron fist in it. That put the lawyers in question under the kind of pressures that I don't think they should be subjected to.

I guess what I am struggling with is this. If you have what we would more traditionally accept as a clear pecuniary interest, the *Commonwealth* case or the *Toomi* case would be the two most obvious cases, or the *Berger* question where you had a positive statement of policy to put the judge right on the record in the conflicting situation, then this would be easy for me to deal with.

But, if we look in the environment down there that existed at the time, and perhaps even exist now, unfortunately, although membership in the club was pecuniary, it was also sort of an honorary thing that went with the title.

I wonder if you did not go a bit far when you said something to the effect that this made the judge " beholden to the club." I really wonder about that, that he had to go out of his way not to displease them. Rather I would think that the court having voted and this being the acceptable thing to do in that particular area, that the judge and all the judges in the system were sensitive to the appearance of impropriety. I think it obviously existed. I've got to say that if I had been a party and I had known about the judge's involvement in that club, although the judge might not have looked at it at all in a preferential way, I would have been worried about it.

Senator Heinz?

Senator HEINZ. Thank you, Mr. Chairman.

Dean Friedman, thank you for some helpful testimony. I find it so helpful that it troubles me, frankly, because I am very concerned

about the implications of Judge Bell's involvement, and indeed the deciding involvement, in the *Atlanta* case where he cast the deciding vote and wrote the opinion on June 17, 1963.

This was after clearly on the record he had been deeply involved with the Vandiver administration and had attended the meeting of July 13, 1959, which Vandiver had called at the Governor's mansion to discuss the *Atlanta* case.

It would appear to me that there is a real question as to whether or not Judge Bell, then Attorney Bell, was acting "of counsel" to very deeply interested parties in the *Atlanta* case matter. If that is the case it would appear that there was a violation, not of judicial ethics, not merely of that, but of the law because, according to the American Law division of the Library of Congress, section 455 was on the books, recodified on the books, June 25, 1948, and had existed prior to that as part of the law of the land since March 3, 1911. That paragraph entitled "Interest of Justice or Judge" states as follows:

Any Justice or Judge of the United States shall disqualify himself in any case in which he has a substantial interest, has been of counsel, is or has been a material witness, or is so related or connected with any party or attorney so as to render it improper in his opinion to sit on the trial, appeal, or other proceeding therein.

It would seem to me that if, indeed, there is a true violation of law here, that it should be troubling to us all on the committee because we would be put in the position of having to vote for someone who broke the law. If that is the case that would be a very dangerous precedent. It would certainly be a terrible standard to set.

Let me ask you this. Do you feel that in this instance, specifically referring to Judge Bell's involvement in the June 17, 1963 *Atlanta* school case decision, that Judge Bell broke the law?

Mr. FRIEDMAN. Yes; Senator, I do. I must qualify that by saying I have not read that opinion, and I am taking second hand the chronology. But assuming the facts as more than one member of the panel now has expressed them, as I said earlier, it seems to me that that is not one of the difficult cases of legal or judicial ethics. It is about as clear a case as anyone would find.

It appears to me that the proponent of the most liberal standard for permitting a judge to sit despite what others might consider to be disqualifying factors, is Mr. Justice Rehnquist in his opinion in *Laird v. Tatum*, which unfortunately I don't have with me. He discusses where the line should be drawn between his conduct in *Laird*, where he felt that he should not disqualify himself, and other conduct that a lawyer might engage in before becoming a judge, which would indeed justify disqualification.

Justice Rehnquist recognizes there, and in his address to the Association of the Bar of the City of New York, that he is a rather lonely dissenter from the general view of the importance of broad disqualification. And yet, even Justice Rehnquist, in his analysis and the standards he sets forth in *Laird v. Tatum*, I am reasonably sure in recollection, would opt for disqualification in the case you described, where a lawyer has been "of counsel" with respect to that very appeal, and then subsequently sits in judgment upon that appeal.

Senator HEINZ. What is the sanction for a judge or justice being at conflict with section 455, having broken the law as stated in section 455? What kind of an infraction is that?

MR. FRIEDMAN. Unfortunately, to my knowledge, it is not an infraction to which sanctions apply short of impeachment or the convening, if it is constitutionally permissible to do so, of a panel of judges, if that were authorized by the Congress, to sit in judgment on the issue—with this qualification. As we saw in the case of the nomination of Judge Haynsworth, one sanction may be to say to a judge: We cannot punish you directly for the misconduct that you engaged in as a judge. That is in the Constitution for good reason. It raises a rather high wall to protect your independence, even at the sacrifice of other values, but one thing we can tell you is that we are not subsequently going to confirm your nomination for another or higher position if that should come before us again.

That clearly is a sanction. It may be, indeed, the only viable and effective sanction. Therefore, I think it puts all the more burden on this committee and on the Senate to look seriously upon these matters and to act upon them accordingly, or else I think your message will be clear, that is: We talk a lot about conflict of interest. We issue guidelines which are not truly enforceable, and if you ignore them, then nobody is really going to care much about it, certainly it is not going to affect adversely your advancement as an officer of the United States of America. That message, it seems to me, is a dangerous one.

Senator HEINZ. Let me ask you further this.

Besides the parties involved in a case at the time that the case was going into the court in question, who might, besides those parties, either ask a judge to disqualify himself at the time or raise it as an issue at a later date? Who would have standing? Under what circumstances could one reasonably expect that to happen, because I gather from the record that that did not happen?

MR. FRIEDMAN. I think the answer is that it is not bloody likely to happen.

There was an instance in which Justice Jackson objected to Justice Black's sitting. That is generally looked upon as an instance that had serious repercussions in terms of interpersonal relations on the court. I think it has suggested to some judges that, although they in my view have the obligation to blow the the whistle on their colleagues, it can be a singularly destructive kind of thing to do in terms of getting the work of the court done and working as effectively with a colleague on the bench as one has to for other matters of the sound administration of justice. So it is truly extraordinary for one judge to point the finger at a colleague.

Again, if it is not done by a party who has standing—and at least in the *Biscayne Bay* case, but I don't know about the other one, the judge's lack of candor precluded the parties from being aware, that is the relevant parties, from being aware that they had such an objection to make—if it is not made by a party, I cannot think of anybody that would have any significant authority in this regard other than this committee and the Senate in a circumstance such as this.

I believe that it is clear that a message is going to go forth from these proceedings. The message is going to be either we take conflicts of interest seriously and therefore we deny confirmation, or we are disposed, as apparently the President-elect is, to shrug off issues of conflict of interest no matter how much we may talk about and ballyhoo, so-called guidelines.

Senator HEINZ. I think it is clear that we all feel very strongly. I am sure I can say this for literally every member of this committee. I think we all are very interested in taking conflict of interest problems very seriously. That is one of the reasons, I think, why we spend so much time in these hearings on Judge Bell.

Let me ask you one further question. Judge Bell apparently did submit, shortly before he resigned from the Circuit Court, a statement detailing his assets. There was on the statement that he filed, which was apparently the standard form set out by the Judicial Conference, a space for him to indicate the kinds of benefits he might be receiving from, for example, a private club which had forgiven him his dues by making him an honorary member.

In that space, I am told, and I say I am told because I have not seen this report myself, it is apparently in the chairman's office, the word "none" has been written in. That would appear to be a misstatement of fact because Judge Bell does admit that he has been receiving honorary memberships and that there is a value to them, and that he established on the record the other day. To you as an expert on ethics, what does that tell you?

Mr. FRIEDMAN. But for the claim which I think would be a difficult one to sustain here, that is, on the part of a judge with respect to something that had been so thoroughly aired generally in the Federal courts and within Judge Bell's own circuit, except for the claim of ignorance of law, it would seem to me to be a violation of law by the judge. And to justify my reading, if indeed it needs a justification, because I think the language is about as clear as you are going to find, when he says: "I am subject to the Judicial Conference to the extent that I am willing to comply," that speaks to me a degree of arrogance, a sense of one's being above the law or, if not above the law, just beyond getting caught, which is precisely the kind of attitude we should not have on the part of the chief law enforcement officer of the country.

Senator HEINZ. When I heard that statement, Dean Friedman, I was similarly troubled. I remained troubled by it. Would you say that there would be other circuit justices, not just on the fifth circuit but on other circuits, who, particularly if you could get them off the record, would agree with Judge Bell's statement? Can you conceive of any other current serving justices agreeing, if not on the record then off the record, with Judge Bell's statement? I recognize, by the way, that this is a hypothetical question.

Mr. FRIEDMAN. I was going to say, as you put the question——

Senator HEINZ. But I am also aware of the fact that we have to examine, absent the other justices here, whether there is a question of custom which might be obscured to some of us who are not Federal circuit judges.

Mr. FRIEDMAN. As you put the question, Senator Heinz, it is difficult to answer for the reason you suggest. However, I can say unequivocally that there is no Federal judge who would take the same position as Judge Bell has, whom I would be prepared to support as Attorney General of the United States, and that, I think, is really the issue before the committee.

Senator HEINZ. Let me ask you one further question and go back to the *Cooper v. Arons* case, the so-called Atlanta school desegrega-

tion case, because there is an issue that I think we all need to be as well informed on as possible. The question I wish to raise is: Was Judge Bell in the meaning of 28 U.S.C. 455, "of counsel" in that case?

The facts are that, based on the facts as I understand them, Bell was not actually retained by one of the plaintiffs, one of the defendants. He did attend a meeting where the Atlanta case was discussed. He was a lawyer.

It appears that his law firm was contributing him and his time to be of public service to the Governor.

Could you, in a court of law, make stick the allegation that Judge Bell was indeed "of counsel" within the meaning of section 455?

MR. FRIEDMAN. I have not the slightest question in my mind about that, Senator Heinz, on the facts as they have been stated. Again, I cannot speak to the accuracy of the facts, but taking them as given, that phrase "of counsel" is a very broad one.

There is in other language in this area, language that might be more narrowly drawn. He gave counsel as to what is in our interests with respect to whether we should appeal because we could be hurt more by an appeal than by deferring it.

Senator HEINZ. That may not be accurate because the State and Governor Vandiver were not a party in the litigation.

MR. FRIEDMAN. That is part of my difficulty, as I say, with respect to the underlying facts. I cannot imagine to whom Judge Bell might have been speaking other than somebody who had some control over whether an appeal would be taken, when he advises this one person at the meeting, as I read it, suggesting that an appeal be taken immediately and then against that Judge Bell argued that: We could be hurt more by an appeal than by not appealing, and therefore we should not appeal.

It may have been that this was a kind of Alice in Wonderland situation in which five or six people who had nothing to do with that appeal were sitting around making believe that they did. I doubt that Judge Bell would have been released from his law firm for that kind of exercise. Presumably he was talking to people who were in a position to make a decision as to whether that appeal would be taken.

If not, and if it was just being mimsy with the borogoves, then of course there is nothing unethical about it except that, as I said, Judge Bell's law firm might want to question him about why he wasn't minding the shop.

Senator HEINZ. Well, very well. Dean Friedman, I thank you.

MR. Chairman, I believe it is back to you.

Senator RIEGLE. Dean, I would think it is relatively uncommon for a dean of a respected law school—you are the dean of the law school; is that correct?

MR. FRIEDMAN. Of the law school; yes.

Senator RIEGLE. I have not served on this committee previously but it is my thought that it would be rare for a dean from a respected law school to come and appear in opposition to the confirmation of an Attorney General. Would that square with your sense of history?

MR. FRIEDMAN. I am aware of no precedent for it, sir.

Senator RIEGLE. I would be interested in knowing how you reached a decision to take that action.

Mr. FRIEDMAN. I alluded earlier in my opening remarks to that. When I read that Mr. Bell had been nominated, particularly as one who supported Mr. Carter with a good deal of hope in his heart, I was dismayed at the appointment on grounds that I suppose one would characterize, not unfairly, as political.

It seems to me to be the betrayal of the kinds of qualities that Mr. Carter had projected to me, and the kinds of concerns with respect to civil rights and civil liberties and the importance of the position of Attorney General as being nonpolitical and independent of the White House. He made a considerable point of that during his campaign, and it was one of the things that induced me to support him.

I, at that point, started keeping a file on Mr. Bell, and spoke to others about the possibility of opposing the nomination.

Subsequently, I found that there were people in a better position than I to make such an effort, and I simply put the file away and let it pass.

I received a call yesterday afternoon from one of the people who is interested in opposing Mr. Bell's nomination. He asked me what I thought about the *Biscayne Bay* case specifically. I told him that I didn't have any question in my mind, on the basis of my background of two decades or more now involving legal and judicial ethics, that it was improper on two counts, and that I would be willing to testify about it.

Apparently he then asked that I be permitted to testify. When I was called about it I seconded that request, and I was granted permission to do so.

Senator RIEGLE. When the nomination was first announced did you know Judge Bell by reputation at that point?

Mr. FRIEDMAN. I did not.

Senator RIEGLE. So you have become acquainted since that time by an examination of history—part of which you have related—and I assume other things as well?

Mr. FRIEDMAN. Yes.

Because the position is so important to those of us who are concerned with the administration of justice, I did try to follow at least the reports in the papers as closely as I could.

Senator RIEGLE. Were you able to watch any of the hearings on television?

Mr. FRIEDMAN. No; I do not now own a television set.

Senator RIEGLE. You are probably the only living American who can say that.

In any event, I am wondering if you have had a chance to read, how thoroughly have you been able to review the committee transcripts?

Mr. FRIEDMAN. Not thoroughly at all. My attention was called to some excerpts of the transcript.

In all candor, I have prepared since 5 o'clock yesterday evening, without the help of a secretary or anyone else, and what I have been able to present is that which I, by and large, have had available through earlier work in this field.

I think it would have been ideal, from the committee's point of view, to have had somebody, whether witness or staff, with the opportunity to research these issues much more thoroughly.

In saying that, I don't mean to suggest any doubt whatsoever as to the conclusions I have expressed, because they are based on the leading cases and on the principal authorities. But one knows that another 12 hours, 24 hours, or 3 days of research certainly would be more revealing than the rather hasty job I necessarily did.

Senator RIEGLE. Is it a fair summary to say that your objections and reservations really then fall in two areas: One, the description you have just given me to my first question, in terms of your own initial response and feeling about the nomination from the beginning and the degree to which you have been able to follow the developments here, and second then, this case that you have presented with respect to the ethical matter? Those are the two grounds on which your objection rests?

Mr. FRIEDMAN. Exactly.

One of the reasons that I stated at the outset, that I had the initial feeling, it was more than a feeling, it was opposition to Judge Bell before the ethical issues arose. This was to permit the committee to discount my testimony insofar as it deemed it appropriate, because I had reached a judgment of opposition prior to that time.

Senator RIEGLE. I was going to say: That is all, Mr. Chairman, but I have a hard time saying that right now because no one else is here.

I thank you for your testimony. The committee thanks you.

I am sorry that the time problems were such as they were, but you were good to come, and what you have had to say I think will be important to us.

Mr. FRIEDMAN. I should add that I was not complaining about the time structures, and I am most grateful for the opportunity.

Thank you, Senator.

Senator RIEGLE. If the next witnesses would approach the witness table—Dock Putnam, Ms. Willie Smith, Hudie McDowell, and Fred Calhoun. I understand that they will be accompanied by Clarence Mitchell.

Let me welcome you all to the committee.

I will move over to the other side for the time being.

Before yielding the chair to my colleague from Indiana, Senator Bayh, I want to welcome all of you.

What tends to happen in the Senate, as I am learning, having been in the Senate 2 weeks or so, is that an awful lot of things happen at one time when the Senate is in session. There are requirements to go back and forth to the Senate floor, and there are other meetings that are scheduled during the day where your attendance is required, so that you have to try to move back and forth between all these different places.

I may have to excuse myself for a short time for that reason, while you are here testifying.

I really do not want to do that, because I have looked forward to your testimony as much or more than that of anybody else's; so, if at some point I am gone for a short period of time, please understand that is is not because I wish to be. I will certainly be back here as quickly as I can be, because I am especially interested in what you have to say.

I want to say one other thing, and that is that I know these rooms are constructed to be somewhat imposing with their high ceilings and

the fact that we are seated on a somewhat higher level than the witnesses and so on.

I want you to put that out of your mind as much as you can, because we all come here with the same standing—to try to figure out what the best thing is to do. I am delighted that you are here and I am anxious to hear what you have to say.

How would you like to proceed?

Mr. MITCHELL. What I would like to do, Mr. Chairman, is to give the names of all the witnesses, and then just explain briefly why they are here, and after that let them go for themselves. I think they will do all right.

TESTIMONY OF CLARENCE MITCHELL—Resumed, ACCOMPANIED BY FRED CALHOUN, DOCK PUTNAM, WILLIE RUTH SMITH, AND HUDIE McDOWELL

I am Clarence Mitchell, director of the Washington Bureau of the NAACP. We have with us Mr. Fred Calhoun, who is of Fullerton, Calif., and was one of the three plaintiffs in the Atlanta case of *Calhoun v. Latimer*. He is the son of Mr. Willie Calhoun, and brother of Ms. Vivian Calhoun Reeves, who was also a plaintiff.

Mr. Calhoun, would you indicate your presence?

[Witness raises his hand.]

Then Ms. Willie Ruth Smith, from Atlanta, who is the mother of one of the original plaintiffs in the case of *Calhoun v. Latimer*.

[Witness raises her hand.]

Then we have Mr. Dock Putnam of Atlanta, who is the father of one of the plaintiffs in the case.

[Witness raises his hand.]

Then we have Mr. Hudie McDowell who is also of Atlanta, and the father of one of the plaintiffs in the case.

[Witness raises his hand.]

These witnesses come, Mr. Chairman, because at the time Mr. Nathaniel Jones was with us, and as the general counsel of NAACP joined with me in presenting our testimony, the question arose as to whether there were people who would want to come up and be heard saying that they did not feel they were properly treated and their rights were postponed.

I think their testimony will support that.

In addition, as you will recall, there came a time when some witnesses arrived here from Atlanta who were testifying in favor of Judge Bell.

Senator Mathias was asked a question about who was Fred Calhoun.

Those witnesses who professed to know all about what was happening in Atlanta, and who said that they had full possession of all the facts, first indicated that no case had been filed because the people in Atlanta weren't ready for it.

Senator Mathias pointed out that indeed a case had been filed, and that the principal plaintiff in the case was Fred Calhoun. He asked them whether they knew Fred Calhoun. They said that there's no such person. They said there's a John Calhoun—as, indeed, there is.

They went further to say that John Calhoun was a party to the arrangements that they had made between themselves—Judge Bell and

Governor Vandiver—to postpone implementation of the court decisions because, as they put it, there was too much turmoil and that sort of thing, didn't have enough money.

Well, it turns out that there is a Mr. Fred Calhoun. He is here with us today. Therefore, they reveal, by that statement, that maybe they weren't as well informed about matters in Atlanta at that time as they professed to be when they testified.

We have also a willingness on the part of some of these witnesses, Mr. McDowell and Mr. Putnam, they will each say, if asked, that they were offered bribes to try to withdraw from this litigation.

Mr. Calhoun will say that he, as the son of Willie Calhoun—who is his father—was aware of the fact that his father was asked to withdraw and the inducement was a bribe.

Having said that, I would appreciate it if Mr. Calhoun would begin the testimony.

Mr. CALHOUN. Thank you very much.

Mr. Chairman, and members of the committee, my name is Fred Calhoun.

I am the assistant director of the Student Educational Development Center in Cypress, Calif., a program for the recruitment and attention to the educational disadvantaged students.

I was one of the plaintiffs on whose behalf my father, Reverend Willie M. Calhoun, filed a suit in 1958 to desegregate schools in the Atlanta public school system.

Also my sister, Vivian, and my other sister, Benita, were also involved in that suit.

I want to thank you for this opportunity to testify to demonstrate how very important I think this decision will be for people throughout the United States of America.

At the age of 10 I was forced to leave my parents. My parents sent me to California. This was so that I could get what we considered an equal opportunity toward education.

It was a traumatic experience for me leaving home at 10 years old and living with my older brother, and fending for myself.

It was also difficult because at 10 years old I still could not read. So I entered Valencia Elementary School in Fullerton, Calif. My self-concept was very low. I can remember the times that I was supposed to participate in spelling bees. I did. There was a situation where everybody would stand up, and as soon as you missed a word you were supposed to sit down. Needless to say, I was the first one to sit down. How can you spell when you cannot read? That was a traumatic experience for me.

After 2 years in California, it got to be a little bit too much for me. I was a young man then. I needed my parents. My parents played a big role in the raising of a child.

I returned to Atlanta, hoping that things would have changed, and hoping that I would have a chance to go to an integrated school, and to play in an integrated little league, football team, and baseball team—just as I had done in Fullerton.

Needless to say, I started to school in the seventh grade at Anderson Park Elementary School, which has an all-black faculty and student body.

From there I entered high school. I was in the eighth grade in Georgia.

It, too, was an all-black school. I have never seen a white person set foot in that institution in my life. I can honestly say that, except for someone like the district superintendent, who was at the top, and who was a white, there were no other whites.

Turner Howard School was not doing it for me in terms of my academic endeavors. I wanted to be somebody, so I asked my father to let me go to California again. So I left again at the age of 16.

I completed my 11th and 12th grades at Fullerton High School. Then I proceeded to go directly into Fullerton College, which is a community college next door. I was there about 1½ years.

Then I went into the military service.

As a matter of fact, I served in the U.S. Army Old Guard in this area here—which is somewhat of an honorary unit. That is, it was an honor to serve in that unit.

I was there for 2 years and decided that what I wanted to do was get an early out and go back to college.

College had been on my mind all of my life. I have been a man of high ambition. Not necessarily did I have the resources, educational resources, in terms of the material and instruction that I needed, but I always was a man of high potential and motivation.

I entered Fullerton College. Sorry, I made a mistake there. I was in the service. I went back to Fullerton College after service. Then I transferred, eventually, to Cypress College where I received my liberal arts degree.

After receiving my degree in liberal arts, I proceeded directly into the University of California at Ervine, Calif., where I received a degree in social ecology, with emphasis in mental health.

I am presently working on a masters in community psychology in the State university.

SENATOR MATHIAS. Could you speak a little louder?

MR. CALHOUN. I am presently working on a masters degree at California State University in community psychology at Long Beach, Calif.

I hope to complete that degree soon.

Probably the most important thing that a student can have at his disposal would be the first 2 years of elementary school. I think those are the critical years that we have to deal with. And those are the critical years that some high administrators found it necessary not to carry out the Supreme Court's decision to integrate schools throughout the Nation.

As a result, I am an example of a person who probably could have been more than I am now. Elementary school for me, when I first started in Atlanta at Harkness school, was a dreadful situation. We had seven classes in two rooms. If I recall correctly, we had two teachers and our principal sometimes substituted as a teacher.

There was no lunch program to speak of. There was no opportunity for recreational activities.

But the confounding thing was that when I went to California all of those things were present. I was the only black student in that Valencia Elementary School. All of those things were present. It was a great opportunity for me to be exposed to other ethnic groups.

I think it was a great opportunity for those people to be exposed to me.

I think when we think in terms of segregation, the proponents of segregation I think they are at the deficit, because they are not allowing themselves to be exposed to other minority groups, or groups that have different attitudes and behavior styles.

Thank you.

Senator BAYH [acting chairman]. We thank you very much, Mr. Calhoun.

Who is next?

Mr. PUTNAM. I live at 818 Kinsey Court in Atlanta.

I was one of the original 10 complainants in the integrated case in Atlanta.

I was offered bribes. Two white fellows came out.

Of course, before then we had gotten some telephone calls.

Senator BAYH. Inasmuch as Mr. Mitchell brought this up, could I interrupt right now to ask you or others who got bribe offers or threats, could you identify who made the bribe offers or who threatened you?

Mr. PUTNAM. No. I did not know them.

Senator BAYH. Was it anybody related to Judge Bell, that you know of?

Mr. PUTNAM. Not that I know of, no.

Senator BAYH. Have you reason to believe it was?

Mr. PUTNAM. At that time I did not really know Judge Bell. I do not remember—

Senator BAYH. Is there anybody who knew Judge Bell, or was threatened or bribed by him or people close to him?

Mr. CALHOUN. I vaguely remember my dad mentioning a judge. I don't know in what capacity, but he did mention a judge.

Senator BAYH. Is your father alive today?

Mr. CALHOUN. He is alive, but ill.

Mr. MITCHELL. Mr. Chairman, the reason I raised the question of bribes is to give the committee an opportunity to weigh that, as to the credibility of those black witnesses from Atlanta, Mr. Cochrane and Mr. King, both of whom painted a picture of Atlanta at that time as filled with blacks who really didn't want to press their rights.

The whole thrust of their testimony was that there was this wonderful understanding between Mr. Bell, acting on behalf of Governor Vandiver, and these gentlemen who identified themselves as the leaders of the black community meeting together and representing the interests of the blacks.

The matter of the bribe offer is important only to the extent that somebody—we really have no reason for saying it was Judge Bell—but somebody in that complicated web in which these people were to be ensnared thought that it was so important to get these blacks to give up their rights that various emissaries came around offering them financial inducement to give up their rights.

Senator BAYH. I think the mentioning of the bribe offer—and certainly the threats and intimidation—is relevant to help us have a better understanding of the environment.

I did not sense from the witnesses, as I recall them—and I must say this has been a hectic kind of thing where we have not been able to plan in advance, even for your presence, and some of us have had to sort

of skitter in and out and try to take care of other responsibilities, and then come back, because we did not know we were going to be here today. We are glad you are, and I hope that you will not consider any of our absences as a personal affront to you. We appreciate your making the extra effort to be here.

As I recall them, I did not get the impression that they were setting anything up for the Governor. I recall Mr. Cochrane suggesting that indeed the relationship he had—he was careful to say: Well, don't let the Governor know. Indeed, Cochrane thought Bell was going beyond what the Governor might want.

Mr. MITCHELL. I think Mr. Bell, in his testimony, I believe it was when he reappeared, indicated that he was kind of a conduit taking back to Governor Vandiver the discussions, or at least parts of them, that transpired between Mr. Cochrane and Mr.—whoever else was involved.

While Mr. Cochrane might have been under the happy, illusory impression that he was talking only to Mr. Bell, Mr. Bell himself has indicated that is not correct. He was, in fact, taking back to Governor Vandiver the substance of the conversations.

Senator BAYH. Mr. Putnam, would you like to proceed?

Mr. PUTNAM. I was offered money. My wife was afraid because we had had threatening telephone calls. She told me to go back in the room. I told her that they had tried to get me to withdraw my name from the case.

After that they left.

A few days later a black fellow came out. He said: How would \$600 look right now?

Senator CHAFFEE. I wonder if the witness could speak a little closer to the microphone. It is hard to hear.

Thank you.

Mr. PUTNAM. He asked me: How would \$600 look right now? At that time I was not making too much money. I would have liked to have accepted, but I told him that I had already got into it and I was going to stay in the case. He left.

But I got a lot of telephone calls after that. I later had my number changed, and had my name taken out of the telephone directory. My wife had gotten scared.

That is all I remember about that time.

Senator BAYH. Thank you.

Mr. PUTNAM. My children never went to integrated schools.

We lived on Windward Drive at that time, 214 Windward Drive.

There was a school down pretty close there, and they tore it down I think for the reason it was an old school.

The next closest school would have been West Haven, which is about two blocks away. It was all-white.

My children had to go about seven blocks, which is at Frankly-Stanley there. I had to carry them, or either they had to walk. It was pretty tough.

I just couldn't see that we had a school that close around, and they had to go that far to another school.

Senator BAYH. I appreciate the effort that you made to remedy that.

Mr. PUTNAM. Thank you.

Senator BAYH. Ms. Smith?

Ms. SMITH. I am Willie Smith from Atlanta, Ga., 2521 Bankhead Highway.

I am one of the plaintiffs in the desegregation case in Atlanta.

I would like to be heard today, and I thank you for it.

I feel as though we have an issue here, where we have been intimidated quite a bit by facts of higher authorities in Atlanta that were in office at the time.

Now the school, I remember an occasion where the school sent someone out from the board of education to baffle us and to bribe us. I remember a lady coming out from the Fulton County Health Center to talk with us. Each time I turned them down.

They didn't see any way of getting to me, and they began to work on my mother and children. I would get home and mother would be crying and say they said what all they were going to do to them, because they wanted me to withdraw the suit.

I had quite a bit of that embarrassment, and so did the children. They would go to school and—several of the teachers told me, said: Well, I'll tell you, it's just bad. We're threatened with losing our jobs. Why don't you just do it?

I told them—I said: Well, I've gone this far and I'm going on.

We had quite a struggle there in Atlanta. Governor Vandiver was the Governor and Mr. Griffin was the assistant administrator.

I feel as though, coming from the head of the thing, it could have been eliminated by their decisions. They could have said one or two words, and some of these things could have been stopped.

Of course, many people knew that they were happening to us.

I feel as though, I just don't feel that he would be the person for this job.

My children have never gone to an integrated school. They are grown now, but they never had the chance to go because during his administration, that is, the days that he was in office, well there just wasn't anything we could do.

Thank you.

Senator BAYH. Ms. Smith, if this is too personal a question then tell me to mind my own business. Do you have any grandchildren?

Ms. SMITH. Yes.

Senator BAYH. What kind of school do they go to?

Ms. SMITH. They're going to the school right next door to us.

Senator BAYH. Is that integrated?

Ms. SMITH. Yes, it is.

Senator BAYH. Thank you.

Mr. McDOWELL. Mr. Chairman, I'm from Atlanta, Ga.

I am up here to testify.

In 1959 we had a rough time. I had two daughters going to school at that time.

Well later—I was working on a job and they sent a man out there to talk with me to try to get me to withdraw my name.

I talked on with them and tried to find out the way it works. I asked them, I said: "Where is you going to get the money from?" He offered me \$500.

He said: "I'll take you up to the post office, and that's where you'll get your money."

That made me feel like then that Mr. Bell had some parts in it.

Senator BAYH. What was that you said about Mr. Bell?

Mr. McDOWELL. About Mr. Bell?

Senator BAYH. I'm sorry. You said something about getting the money at the post office, and then you said——

Mr. McDOWELL. Yeah, that's what he said: "I'll take you to the post office and that's where you'll get your money." I wondered why he had to take me to the post office.

Senator BAYH. You said: "That made me feel——"

You didn't mention Judge Bell's name? I thought you did.

Mr. McDOWELL. Which I did. I felt like that Mr. Bell was a part in it.

Senator BAYH. Had you met Mr. Bell?

Were you working with Mr. Bell?

Mr. McDOWELL. Was I working with him?

He didn't say who he was working with. That's all he said: "I'll take you to the post office."

Senator BAYH. Had you been involved with Mr. Bell in his capacity as an emissary to Governor Vandiver?

Mr. McDOWELL. No.

Senator BAYH. Had you ever met him?

Mr. McDOWELL. Not in person.

Senator BAYH. How could you think he was involved in the \$500 then?

Mr. McDOWELL. That's the way I felt. That's just the way I felt. I could be wrong.

Senator BAYH. Let me suggest here, Mr. McDowell, that is a pretty serious charge.

Somebody who is going to give you \$500 for giving up your rights to go to jail.

You say you had not met Judge Bell. You were not working with him.

I am going to ask you how, at that time, when you did not even know Judge Bell, you could have equated him with that \$500?

You might look back now and say: well, it might have been Judge Bell, but how could you, at that time, have done that?

Mr. McDOWELL. That's the way I felt about it.

I could have been wrong, as I say. I could have been wrong at that time, but my feeling was like that.

Senator BAYH. I don't want to push any further, but I—excuse me. Go ahead.

Mr. McDOWELL. We went on and—Governor Vandiver, he was in office at that time. I heard him say out of his own mouth that his children would never go to an integrated school long as he was the Governor. That's about all I have to say about it.

At that time Mr. Bell was working with Governor Vandiver.

That's all I have.

Senator BAYH. I think we all know that. I appreciate, first of all, your coming, at some inconvenience.

Second, and I think more importantly, I salute you for your courage and tenacity with which you hung in there. That was a time when you must have been under some severe pressure to take the temporary but easy road. It is not easy to do.

It is a lot easier for those of us up here to say it is not easy to do than it would be if we were even more familiar with the situation.

Let me just ask one question to try to—all of you were parties to the case, is that accurate?

[All witnesses nod in the affirmative.]

You were personally involved, Mr. Calhoun?

Were any of you involved with Judge Bell, I mean been in meetings with him?

[All witnesses shake heads negatively.]

We have had a number of cases involved here and I don't know whether it was this case or another case where parties were told to come and we'll negotiate it, and don't bring your lawyers.

Have any of you been told that?

[Witnesses shake heads negatively.]

Mr. JONES. That was the case, but it was 1972 at another phase, another level.

Senator BAYH. These people were not involved in the meeting to which they had been told to come and we'll work something out, and don't bring your lawyers?

Mr. JONES. No.

Mr. MITCHELL. Mr. Chairman, that seems to be the gravity of the matter. Those two witnesses that came up here from Atlanta said that they got together the interested parties and the interested parties were so delighted to forgo their rights.

They even went so far in comments in response to Senator Mathias' questions, as I said a moment ago, to say that a Mr. Calhoun, whom they had identified as one of the parties in the case, was at the meeting and agreed to what Judge Bell was trying to pedal. It turns out that they don't even know that there was a flesh and blood Fred Calhoun who is now sitting here before us, who Senator Mathias knew was there because he was reading the court record.

It seems to me that if this committee is going to give any weight to the testimony of those people who came up here as great friends of Judge Bell, then it ought to recognize that in some way they just did not give you the full picture.

Senator BAYH. Certainly if they led us to believe that these people had been involved in the negotiating session, they were wrong.

Senator Mathias?

Senator MATHIAS. I want to join Senator Bayh in thanking you for coming.

I know that it was a trip made without much notice or preparation. It is an important participation in government and it is a very helpful thing for this committee that you are here.

Obviously we have a troubling problem before us. That is why we need the help of all the witnesses that have been here.

A very harsh word has been used here, the word bribe.

There has been no suggestion as to who may have offered a bribe.

Mr. Putnam, you said that you were offered \$600 for the purpose of removing yourself as a plaintiff in the Atlanta school case, right?

Mr. PUTNAM. That is right.

Senator MATHIAS. Mr. McDowell, you said you were offered \$500 for the same purpose, is that right?

Mr. McDOWELL. That is right.

Senator MATHIAS. Did either of you know the party who made that offer to you?

Mr. PUTNAM. I do not know the party.

Senator MATHIAS. He was a stranger to you?

Mr. PUTNAM. Yes.

Mr. McDOWELL. I didn't know his name either.

Senator MATHIAS. Did each of you view this as a serious offer? Did you take it as a light thing, or did you think that the people that came to you and made this suggestion could deliver if you were willing to sign a paper which would remove your name from the complaint, that they would actually be able to produce those sums of money?

Mr. PUTNAM. I do not know.

The fellow who told me, said he did not know whether it was going to be paid by check or in cash. It was \$600.

I told him: Well, I'm not going to withdraw my name.

He left.

Senator MATHIAS. That ended that?

Mr. PUTNAM. Yes.

Senator MATHIAS. You said your harassment was such that you finally had to have your telephone number changed and your listing taken out of the book?

Mr. PUTNAM. Right.

Senator MATHIAS. So you got both the carrot and the stick. You were offered some money to get out and you were threatened?

Mr. PUTNAM. Right.

Senator MATHIAS. Did you attend any meetings in the black community, or elsewhere, in which the question of getting out was discussed?

Mr. PUTNAM. No; I did not attend any meetings.

Senator MATHIAS. Let me read you from the testimony which was taken here on the 13th of January, just a few days ago.

Mr. Warren Cochrane was the witness.

Senator Riegle said:

I won't go on at great length here, but I want to understand a little better the content of the meetings that you had.

I take it that a meeting would be arranged and Mr. Bell would come. He would brief you on what the lay of the land was in the Governor's office?

Then Mr. Cochrane, who was sitting right where you are sitting, said:

Some of the meetings were held in his office meaning Judge Bell's office.

Senator Riegle said:

What did he ask you to do? Was there an appeal to the group, that the group do certain things or not do certain things? Was he simply reporting what was happening or was there an effort to try to secure some kind of response from the group?

Mr. Cochrane:

There was an effort, of course, to get us, which we agreed in the beginning, to go slow, to buy time until we could work this thing out.

The Sibley commission didn't come out the first few meetings. That did not happen until after 1960.

The idea was we went over the budget of the state. One thing was clear in my mind, the state was in serious financial difficulty.

We were asked by Judge Bell, he said: "First, I am going to keep you informed of what is happening and I want you to work with us to see if we can hold off for a short period of time any massive action in the way of suits and so forth until we can bidetime to see if we can work something out."

Senator MATHIAS. Did any one of you at this table here participate in any meeting of that sort?

[All witnesses shake heads negatively.]

Mr. McDOWELL. I was not.

Mr. MITCHELL. Senator Mathias, they are answering no, but I don't know whether you can hear them.

Mr. Putnam says no, Ms. Smith says no, Mr. Smith says I was not.

Senator MATHIAS. So, your testimony is that you were never directly consulted about the case in which you were the parties of record; is that correct?

[Witnesses nod heads affirmatively.]

Senator MATHIAS. And the contacts that you had were, in fact, either threats or attempts to secure your withdrawal by various means, is that correct?

[Witnesses nod heads affirmatively.]

Senator MATHIAS. There was further testimony before the committee that it was probably a good thing to delay awhile. Specifically, the testimony was that the money was not available to pursue these cases. Was that the fact? Did you feel that you had the money to go forward with the case?

You had filed the cases. You were the plaintiffs.

Had it ever been suggested to you that it was going to cost more than you assumed—for you and whoever was helping you with the case—to go forward with it?

Were you prepared to go forward and carry the case to a decision?

Ms. SMITH. At the time we felt so.

Mr. PUTNAM. Yes; we were prepared to carry the case on.

Senator MATHIAS. Did anybody ever tell you that meetings of the kind which I have just described to you in the testimony that was given here, did anybody ever tell you that those meetings were taking place, and that matters that were of obvious vital interest to you if you were already parties to the case, matters of this sort, would be discussed and some sort of decisions be made? Did you ever get wind of those meetings? Did you ever hear any rumors or gossip about them, or anything at all?

[All witnesses nod negatively.]

Mr. MITCHELL. I would appreciate it if the record would show that all answered no.

Senator MATHIAS. I so observe.

Mr. MITCHELL. I just said that for the record.

Senator MATHIAS. As I say, I want to welcome all of these witnesses, but I want particularly to welcome Mr. Calhoun because he had become a kind of mystery figure at an earlier stage of this proceeding.

The testimony was that Mr. Calhoun was one of those who was at one of those meetings at which Mr. Cochrane was present, and Judge Bell was present. But I take it you were not that Mr. Calhoun?

Mr. CALHOUN. No, sir. I do not think so. I was only 12 years old at that time. I don't see why I would be there.

Senator MATHIAS. Thank you.

Senator CHAFEE. I would like to join in congratulating you and complimenting you for taking the time and trouble to come up here on such short notice.

What we are talking about now, to get it in the proper time, we are talking about 1961, are we not, when these approaches were made to Mr. Putnam, Mr. McDowell, and Ms. Smith, is that correct?

Mr. PUTNAM. That is correct.

Senator CHAFEE. Did you ever mention to your attorney the fact that somebody had come to you offering you a bribe?

Mr. PUTNAM. Yes; I had mentioned it to him.

Senator CHAFEE. You told your attorney?

Mr. PUTNAM. Right.

Senator CHAFEE. Mr. McDowell?

Mr. McDOWELL. I told him, too.

Senator CHAFEE. Ms. Smith?

Ms. SMITH. Yes.

Senator CHAFEE. Who was the attorney that you told this to? Do you remember?

Mr. McDOWELL. Mr. Moore.

Senator CHAFEE. Mr. Moore?

Mr. JONES. I have a transcript of the record, and the counsel for the plaintiffs were E. E. Moore, Jr., A. T. Walton, and Donald L. Hollowell, of Atlanta, Ms. Constance Becker Motley, and Mr. Thurgood Marshall. They were counsel for the plaintiffs at that time.

Senator CHAFEE. Does anybody know whether the counsel ever raised this to the judge sitting on the case, that the plaintiffs had been approached and offered a bribe? Do any of you know?

[All witnesses shake heads negatively.]

This is serious business, talking about bribes. I know you appreciate that. I wonder if the attorney—no one knows?

[All witnesses shake heads negatively.]

Senator CHAFEE. As a matter of fact you did not accept a bribe and the case went on. Isn't this the case that continued on up until 1972?

Ms. SMITH. Yes.

Mr. MITCHELL. That is correct.

Senator CHAFEE. So the case went on and the final settlement, which you may have covered in your testimony—I came in a little late—but the final settlement came in 1972. At that time Atlanta schools, the testimony shows that by then they were 82 percent black.

When that final settlement came in 1972, did each of the plaintiffs consent to that settlement?

Mr. McDowell?

Mr. McDOWELL. I did.

Senator CHAFEE. Willingly?

Mr. McDOWELL. Yes.

Senator CHAFEE. Ms. Smith?

Ms. SMITH. Did we integrate the schools?

Senator CHAFEE. Well, the settlement came, as the testimony has indicated, and you can take different witnesses, but it seems to be that the parties had just grown weary, and the expenses were great, and the schools anyway had reached an 82-percent black level in Atlanta and a decision was to settle the case.

That is the way we got the testimony here.

In order to settle the case, the plaintiffs had to agree to settle it. My question is, was there any pressure on you to settle at that time, any suggestion—

Mr. PUTNAM. None at all.

Senator CHAFEE. Why did you agree to settle it?

Mr. PUTNAM. Because some of the schools had begun to be integrated at that time.

Mr. JONES. Senator, it might also be helpful to observe that by that time, I think, most of the plaintiffs' children—these witnesses—had already passed through the system, and in some respects I think the issues were mooted as to them.

There were additional plaintiffs brought in, and other intervenors who were involved in settlement in 1972.

Senator CHAFEE. But everybody agreed to it when the settlement was proposed, when it came up in 1972?

I am trying to get this square in my mind—exactly the point that these witnesses are making. As I get it, the point they are making is that in 1961 somebody approached them with the suggestion of a bribe, more than a suggestion, a flat offer of a bribe. They do not know who, as I get the testimony. There is nothing that any of the witnesses has to suggest that the bribe originated with Judge Bell.

Mr. MITCHELL. May I clarify it to this extent, Senator Chafee?

The purpose of bringing these people up here was not to talk about a bribe. That is ancillary. I tried to develop that before you came in.

Senator CHAFEE. I apologize.

Mr. MITCHELL. The reason we brought these people up here is because Mr. Jones and I came in here in good faith. We described the time in which Mr. Bell was the architect of denying black children their constitutional right, and it was Senator Bayh and Senator Kennedy who said why don't you produce the bodies it affects? Who is it that was denied their constitutional rights? We said we didn't have the money to bring these people up here but—

Senator MATHIAS. Go right ahead.

Mr. MITCHELL. We said we didn't have the money to bring these people up here, but if given the time we would try to do it. So the purpose of asking these people to come is to verify the fact that at a time when the U.S. Supreme Court was saying that blacks are entitled to equal treatment under law, there were flesh and blood people seeking the vindication of that right, and Mr. Bell was a part of the apparatus that denied them that right.

These other things, such as the bribes being offered by anonymous people and telephone threats, we are not attributing that to Mr. Bell. Obviously that would be unfair. What we are saying is that Mr. Bell, through his architecture which he shared with Governor Vandiver, helped to create the atmosphere in which all of these kinds of events took place to the detriment of these people.

Here sits a man who, as a boy, had to go all the way to the State of California just to learn how to read.

Here is a gentleman who had to change his telephone number because people were threatening him.

Here is a lady who was willing to entrust her children to this kind of operation.

Here is a gentleman who, even though he was under pressure, stuck in there.

It seems to me that that is the important thing.

Did Mr. Bell, in his capacity as the chief of staff of Governor Vandiver, a segregationist, blight the lives of these people and their children?

The answer to that is yes, and it seems to me it is an affront to the American people, to our system of government, to say that somebody who was a party to the denial of these rights is, as pictured by those who support him, a kind of subject of canonization.

He didn't shoot them outright by pulling the trigger real hard. He pulled the trigger real easy, by having a moderate way of doing this. But the victim, unfortunately, is just as dead whether you pull the trigger easy or hard. I say that Mr. Bell pulled the trigger with his advice to the Governor of Georgia, by which the rights of these children and those others associated were forever killed.

Senator CHAFFEE. I think it has been very useful to see the witnesses, that is, the plaintiffs in the case, as you say, come in flesh and blood.

I join with the others not only to thank you for coming here today, but to thank you for sticking in there in times when you must have been subject to incredible pressures which those of us sitting up here, particularly from Northeastern States, could not understand, back some 16 years ago.

Thank you.

Senator MATHIAS. Mr. Calhoun, do you know a John Calhoun?

Mr. MITCHELL. He doesn't know him; but I know him.

Mr. Calhoun, I suspect, was, in fact, a part of that meeting, because there is in the city of Atlanta a kind of shadow government in which certain blacks and certain whites meet together and impose their decisions on others.

Mr. Calhoun is a gentleman I've known for a long while, but I understand he supports the nomination of Mr. Bell, so I assume he might well have been a part of it. But that is not the person who sits here.

As I said, Mr. Bell's supporters didn't even know that this gentleman existed, because they said it was wrong in that they said "Fred" when they should have said "John".

Senator MATHIAS. That makes it clear.

Thank you very much.

Mr. JONES. May I make one other observation to follow up Mr. Mitchell?

Mr. Cochrane has testified that apparently there was some concensus among blacks that there should be a delay in implementation of Judge Hooper's 1959 order.

I think each of these adult witnesses was asked, that is, those who were adults at the time, whether they were agreeable, or amenable, or would have gone along with any kind of delay had they known about those negotiations, and their answers would have been categorically no.

Senator MATHIAS. Is there any disagreement of that among any of you?

[All witnesses shake heads negatively.]

Senator MATHIAS. The record will show there is no disagreement.

Mr. MITCHELL. As you do in jury trials, I would like to ask each of them, individually.

Senator MATHIAS. We will ask each of them individually to answer.

Mr. MITCHELL. Would you say that you were willing to postpone the rights of your children in 1959?

Mr. McDOWELL. No.

Mr. MITCHELL. Ms. Smith?

Ms. SMITH. No.

Mr. MITCHELL. Mr. Putnam?

Mr. PUTNAM. No.

Mr. MITCHELL. Mr. Calhoun?

Mr. CALHOUN. No.

My father was too dedicated to do anything like that.

Senator MATHIAS. Thank you all very much.

Senator CHAFFEE. Let me ask a question of each witness, if I might.

Mr. Putnam, what are your views on this nomination?

Mr. PUTNAM. I do not really know. You mean Judge Bell?

Senator CHAFFEE. Yes.

Mr. PUTNAM. I don't think he'd be the right man, really.

Senator CHAFFEE. Ms. Smith?

Ms. SMITH. I don't think he'd be the right man.

I have a kind of doubt—quite a bit of doubt. I don't think he'd be the right man.

Senator CHAFFEE. Mr. McDowell?

Mr. McDOWELL. I don't think he'd be the right man, not for us.

Senator CHAFFEE. Mr. Calhoun?

Mr. CALHOUN. I think the man lacks sensitivity, and he doesn't have time as far as black people are concerned.

Senator CHAFFEE. I assume you all supported Mr. Carter for the Presidency, but I won't put you in—that has nothing to do with this case.

Senator MATHIAS. Thank you again.

The next witnesses are Volma Overton and Laverne Royal of Corpus Christi, Tex.

Is there anyone else who came from Texas to testify in connection with this *Cisneros* case?

Mr. MITCHELL. We are supposed to have our witness coming in from Corpus Christi by plane. I don't know whether he has gotten here.

With your permission, could Mr. Jones sit with the next witness?

Senator MATHIAS. Your name is Volma Overton?

What is your address, Mr. Overton?

TESTIMONY OF VOLMA OVERTON, AUSTIN, TEX.

Mr. OVERTON. I live at 1403 Springdale Road, Austin, Tex. 78721.

I am president of the Austin branch NAACP, and I have been president for the last 14 years, and I'm elected again.

I came here because of the history of the case of the Austin NAACP and the school districts. In 1971 HEW found Austin independent school district out of compliance. At that time the Justice Department filed a complaint against them, against the school district. The black schools were closed in our community. The courts found that the blacks

had been discriminated against by race. I do not think they denied that.

Senator MATHIAS. Was Judge Bell; are you talking——

Mr. OVERTON. The reason I am here, and the reason I wanted to come to make a statement of this matter, sir, was because it has come to our attention that Judge Bell is claiming that he made the decisions in the *Austin* case, he is being credited with making the decision. Also the Austin independent school district is taking comfort in the fact that he did that and is being considered for the Attorney General. Also the black community, at this time, feels very disappointed at the decision rendered.

This case started in 1971 and is still in the court. The black schools have been closed. The blacks are bearing the burden of integration because they are being bused.

My relationship to the case, sir, is that my daughter is an intervenor in the case styled *Dedris Dell Overton v. Austin Independent School District*. She was in the seventh grade at the time, and at the present time she is in the tenth grade. From that time until this day the black schools have been closed and the blacks through the high schools continue to bear the burden of integration.

The elementary schools are not integrated at this time and I feel that if Judge Bell is taking credit for the decision of the *Austin Independent School District*—we feel that it has certainly been unfair to the black community.

Senator MATHIAS (acting chairman). Let me review with you what the situation was before the case.

There was a totally segregated school system before this case was brought?

Mr. OVERTON. That is right.

Senator MATHIAS. What is the situation today?

Mr. OVERTON. Today the blacks in the high school and junior high school grades are being bused for integration purposes. We have a sixth grade learning center, and there is no integration below the sixth grade.

Senator MATHIAS. That is the *Austin* case?

Mr. OVERTON. That is the *Austin* case, yes.

No white kids are being bused for integration at this time.

Senator MATHIAS. What do you think the effect of this is on the children who are involved?

Mr. OVERTON. The effect is that the blacks continue to believe that they are bearing the burden of the integration of the schools that is under the ruling that has been made for the school district.

Senator MATHIAS. Certainly as far as the children below the sixth grade are concerned, the *Brown* decision doesn't exist then?

Mr. OVERTON. That is correct, sir.

Senator MATHIAS. What role did Judge Bell have?

Mr. OVERTON. I understand the role of the fifth circuit is that we appealed the ruling of the district judge. He ruled, in the *Austin Independent School District* case, that——

Senator MATHIAS. So the role that you are describing is his role as an appellate judge, in view of the district court's decision?

Mr. OVERTON. Yes.

Senator MATHIAS. Were you personally present at any time during the proceedings?

Mr. OVERTON. I was personally present during the hearing, that is the trial, yes.

Senator MATHIAS. In the district court?

Mr. OVERTON. Yes.

Black schools in our communities are being used for other purposes now.

Senator MATHIAS. Senator Chafee?

Senator CHAFEE. As I understand the situation in Austin, it is that the grades below the sixth grade are what we might call neighborhood schools and, therefore, there is lack of integration because the communities so make it. Is that correct? The neighborhoods so make it?

Mr. OVERTON. The schools are in black communities and white communities. There is no integration below that level.

Senator CHAFEE. There is no drawing of school districts so as to make a school a segregated school, is that correct? There has not been that implication in the *Austin* case, as I understand it.

Mr. JONES. May I interject?

Senator CHAFEE. Yes.

Mr. JONES. That is one of the questions which is now before the courts on remand in the *Austin* case. That is whether the court has to determine, that is, the low court, whether the segregation that exists systemwide results strictly from residential patterns, or is there a nexus between the residential patterns and school policy. That was not clear when the matter was presented to the Supreme Court. The remand is for the purposes of clarification.

I might observe that the fifth circuit, at one point, did order the development of a comprehensive systemwide plan of desegregation for Austin that would have encompassed all of the elementary schools.

That is the issue that was appealed by the Austin school district to the Supreme Court, which the Supreme Court sent back for further proceedings.

Senator CHAFEE. Tell me exactly what happened when this was appealed to the Supreme Court, outside of that remanding on that particular point. Is that what the Supreme Court did, just remanded on that? Did they discuss the case in any other aspects?

Mr. OVERTON. The school district appealed to the Supreme Court the ruling of the fifth circuit. The court had ruled that indeed blacks had been discriminated against and that more integration was possible.

There were other parts of it. I understand, as being the language of the court that they asked that it be clarified.

The school district stated that the courts were using new language, and they asked that it be clarified and they appealed it to the Supreme Court.

Senator CHAFEE. Is it your point that Judge Bell's decision was so poor in this case that it disqualifies him to be a—this and other evidence—

Mr. OVERTON. It is our opinion that the ruling, and the closing of the black schools for integration, and not having a comprehensive plan to include the total school system—it is that that he takes credit

for as a comprehensive plan. It does not comply, and it's not compatible with the thinking of the black community.

Senator CHAFEE. Does it comply with the thinking of the Supreme Court?

Mr. OVERTON. They sent it back to the courts, so apparently it did not.

Senator CHAFEE. Thank you.

Senator MATHIAS [acting chairman]. Just to try and fix this very complex question in our minds, I might refer to the opinion that was written by Judge Wisdom with whom the chief judge, Judge Brown, and Judge Gewett, Judge Goldberg, Judge Dyer, and Judge Simpson join.

They have a section here which they head "Discussion of Judge Bell's Special Opinion."

At this point Judge Wisdom said that:

The questions cry for settlement. Instead of the judicial resolution of controverted issues squarely before the court, the majority opinion produces generalized statements that would be innocuous, except that the looseness of their language opens the way for recalcitrant school boards to obey the Supreme Court's mandate in *Swann*.

It goes on to say:

The important issue of this case, as in *Cisneros*, as well as Mexican-Americans who are never subjected to statutory segregation, are entitled to the same benefits of school desegregation as blacks or whites.

Was Judge Wisdom right in his fear that the order issued was so loose that it was impossible to avoid integration below the sixth-grade level?

Mr. OVERTON. We think so because from 1971 to today each time we have had a ruling from the courts the school board has had that much latitude not to comply with the law.

Senator MATHIAS. Did they ever, in their refusals to do anything further in the way of integration, refer to this case? Did they ever cite this case as the grounds for further denying or refusing further action?

Mr. OVERTON. The fact that they asked for a further ruling from the Supreme Court, I think, is their reason for doing so.

Senator MATHIAS. In other words they said, we are going to wait until the courts say something further?

Mr. OVERTON. That's correct.

Senator MATHIAS. Do you have an opinion as to whether Griffin Bell would make a good Attorney General of the United States?

Mr. OVERTON. I do, sir.

Senator MATHIAS. What is that opinion?

Mr. OVERTON. I do not feel at this time that he would make a good Attorney General of the United States.

Senator MATHIAS. Would you care to tell the committee why?

Mr. OVERTON. I feel in some of the decisions rendered in the school case, and other testimony, and listening to the hearings that I have this opinion, sir.

Senator MATHIAS. Senator Chafee?

Senator CHAFEE. You did not have an opportunity, I suppose, personally to observe Judge Bell inasmuch as you participated solely in

the trial court activities, is that correct? You did not see the fifth circuit handle this, did you?

Mr. OVERTON. No; I did not. There was a three-man appellate hearing. I am not sure if Judge Bell was one of them.

Senator CHAFFEE. I see.

Thank you.

Mr. JONES. May I suggest to the members of the committee that the rationale for Mr. Overton's presence today and his testimony was to try—his not being a lawyer—to assist the committee in coming to feel what a community senses when it attempts to work through the system and to litigate these questions, and to prevail at one level, and then to have it frustrated at a higher level.

Senator MATHIAS. I think he has given the committee a very graphic feeling of having gone to court and having worked through the system, and having sought a redress of grievance at the highest levels. And here they are still in the community with the primary grades totally segregated. They are still unable, as a result of the judicial process, to get the relief which the Supreme Court has said every American is entitled to.

Does that summarize correctly?

Mr. OVERTON. Yes.

Mr. JONES. The point is, with respect to the closing of black schools that these schools are not closed because of their physical deterioration. They are now being used for other educational purposes. They were closed, and the black children were transported out to white schools, and the black community felt that this should have been two-way, with white students transported into those schools and they would have had a sense of community with respect to that school as well.

Senator MATHIAS. And the burden of being transported because they are getting bused. However you feel about busing as an instrument of education, it does increase the length of a school day. It takes a certain amount of energy to be transported by bus. It is a further drain on a child's energy. It may be considered a useful expenditure because of other factors, but everything else being equal most of us would rather not see children being bused.

Mr. JONES. I think Mr. Overton would certainly endorse that characterization of the problem because, as he stated to me, there is this feeling in the community that blacks are precluded from participating in many activities by virtue of this burden.

Senator MATHIAS. I guess one of the burdens of transportation includes the burden of any witness who has traveled long and far to come to this committee.

Mr. JONES. I might note, Mr. Mathias, that we reached Mr. Overton late yesterday afternoon. He was able to get a reservation on a 6:50 flight—not into Washington, because there was nothing coming here, but into Kennedy airport. He arrived at 1:47 this morning when I met him. We took him to my home and we spent there what was left of the night. We left at 6 for the airport to be here at 9. He has put in an extremely long 2 days to get here.

Senator MATHIAS. That is impressive evidence of his commitment to his continuing commitment to making the process work. We thank him for it.

Senator CHAFEE. I think it is commendable on both your parts.

Let me ask one more question.

Could you give me the present breakdown of the school population, roughly, in Austin as it relates percentagewise to blacks, Mexican-Americans, and whites?

Mr. OVERTON. Percentagewise, blacks are roughly 12. Mexican-Americans are 17 percent.

Senator CHAFEE. Thank you.

So that when we talk about these grades one through six being segregated, how many schools are we talking about? Let us assume that they are neighborhood schools. Are we talking about 10 schools that are, let's say, all black? Are we talking about three schools—roughly?

Mr. OVERTON. Within the black community, the ones that would be all black, that is 99 percent black, there would be four or five elementary schools.

Senator CHAFEE. Up through the sixth grade?

Mr. OVERTON. Yes. The black community is clearly identifiable as an area. They are all there within these schools.

Senator CHAFEE. Yet all of the blacks are bussed to high schools? I suppose some can walk to high schools?

Mr. OVERTON. Yes.

Senator CHAFEE. Were there black high schools in the black community—that is, any black high school that was closed?

Mr. OVERTON. Yes; a black high school has been closed. It is presently used as a community college.

Senator CHAFEE. When did that take place? Do you know, roughly?

Mr. OVERTON. It has been a number of years. I would think about 5 or 6 years. I do not know.

Senator CHAFEE. Thank you.

Senator MATHIAS. We thank you again.

Mr. Kenyatta.

Would you identify the witness who is with you?

Mr. KENYATTA. Certainly. In fact, speaking first will be the Reverend Wycliffe Jangdharrie, who is director of the Black Economic Development Conference based in Philadelphia. After Rev. Jangdharrie's statement, then I have a few remarks. Then we would like to open ourselves for questioning.

Senator MATHIAS. Would you each, for the sake of the record, let us have your addresses?

TESTIMONY OF WYCLIFFE K. JANGDHARRIE, PHILADELPHIA, PA.

Mr. JANGDHARRIE. I am the Reverend Wycliffe Jangdharrie, who lives at 318 West Johnson Street in Philadelphia.

Mr. Chairman, and members of this committee, on behalf of the Black Economic Development Conference and millions of concerned Americans, whites, Spanish-speaking, Catholics, Protestants, and Jews, as well as blacks, I congratulate this committee for extending these hearings concerning the unfortunate nomination of former Judge Griffin Bell for the position of Attorney General.

As the director of the Black Economic Development Conference, I have carefully spelled out our opposition to Mr. Bell's nomination in a letter to Senator Eastland which may not have yet reached the

full committee. Therefore I will present my testimony by sharing this letter with you. I hope that you will keep in mind that my remarks were prepared for presentation to Senator Eastland and these remarks may reflect a suspicion which many minority Americans harbor toward your committee because of Senator Eastland's chairmanship.

After my statement, I would like for your committee to hear a few remarks from my associate, the Reverend Mohammad Kenyatta, Reverend Kenyatta is a former director of our organization and now serves as a permanent representative to the United Nations' nongovernmental organization section, where he has represented us for the past 3 years. Also Reverend Kenyatta is currently visiting professor of urban affairs at Temple University in Philadelphia and a leading member of the National Council of Churches' Commission on Justice and Liberation.

After my statement and Reverend Kenyatta's remarks we are both ready to respond to any questions your committee would like to put to us.

The letter reads as follows.

Senator MATHIAS. Let me say this: I welcome your reading the letter and I think it is the wise thing to do. I have great confidence in our chairman, Senator Eastland. I am sure that will be part of the record if you sent it to him and if he has received it. But I urge you to go ahead and read it personally now because I think your presence and your ability to read it will be a valuable personal addition.

Mr. JANDBHARRIE. Thank you very much.

BLACK ECONOMIC DEVELOPMENT CONFERENCE INC.,
Philadelphia, Pa., January 14, 1977.

Senator JAMES O. EASTLAND,
Chairman, Senate Judiciary Committee,
Washington, D.C.

Senator EASTLAND: We of the Black Economic Development Conference, Inc. (BEDC) write to express our adamant opposition to the nomination of Mr. Griffin Bell for the sensitive post of Attorney General of the United States. The Bell nomination is an affront to every justice-loving citizen of this nation and especially to the Black American voter whose support at the polls made Jimmy Carter's election possible.

We are painfully aware, Senator Eastland, of your own record of racism, bigotry and the denial of democratic rights to Blacks in your own home state of Mississippi. We know that an appeal to you is an appeal to the wolf to block the fox from the henhouse. Yet protocol requires that we direct this statement to the Chairmanship you unfortunately held.

Our opposition, Senator, is based on the simple principles of justice and common sense. Mr. Bell, until a few days ago, has been a prominent member of exclusive social clubs for the financial elite, clubs that bar their doors to Blacks, to Jews, to all Americans of the so-called colored races. How then can any rational person expect Mr. Bell to act as the prime advocate of racial justice on behalf of all of the citizens of our country?

Mr. Bell joined forces with that arch-criminal of American political history, Mr. Richard M. Nixon, in an effort to place a self-avowed white supremacist, Mr. G. Harold Carswell, on the Supreme Court of our nation. How then can we expect Mr. Bell to protect the rights of disadvantaged minorities who still suffer the wounds of bigotry and prejudice?

As has been thoroughly documented by the NAACP, the National Conference of Blacks Lawyers and others in the forefront of the struggle for justice through law, Mr. Bell's record as an officer of the courts has been a record of obstructing desegregation and racial equality. What cruel joke is President-elect Carter playing with the lives of minority Americans and the future of our children that he would nominate the like of Mr. Griffin Bell to hold the reins of the Depart-

ment of Justice, including such a citadel of secret police power as the Federal Bureau of Investigation?

While a federal judge, Mr. Griffin Bell fought to bar the Honorable Julian Bond from the seat in the Georgia legislature to which Mr. Bond had been elected by a majority of voters in accordance with the law. Has Mr. Carter taken leave of his senses that he would nominate a man who does not even support the basic principles of democracy to become the chief law enforcement officer of the USA?

Certainly there is no lack of other available candidates, more qualified than Mr. Bell has ever been.

Why has President-elect Carter not turned to persons like Judge Leon Higginbotham, or Judge William Mauritan, or Congresswoman Barbara Jordan, or Judge Lisa Richette, or Secretary William T. Coleman, or Attorney Marian Wright Edelman, or Attorney Haywood Burns, or former Attorney General Ramsey Clark, or any of the many other women and men, of whatever race or party, who might bring distinction, competence, compassion and dignity to the post of Attorney General?

We believe it is because Mr. Carter, like Mr. Nixon before him, has elected to pursue a Southern strategy that is really a cold-blooded capitulation to bald-faced racism. We believe that Mr. Carter has found in Mr. Bell the Democratic equivalent of John Mitchell—a political soulmate who places cronyism over Constitutionalism, who places political advantage over jurisprudential excellence, who places the tomb of expedience over the grave of justice.

Not since the historic scandal of the Hayes-Tilden compromise which bartered Black emancipation for the bondage of Jim Crow has the American people been confronted with so vile and dangerous a fraud.

Let us be clear. We will not sit still for this. Decent, justice-loving Americans—white or Black or Hispanic, Catholic or Protestant or Jewish—oppose this fraud now and will continue our opposition if this man Bell is confirmed.

Even if you cannot comprehend our cry for justice, Senator, you and your committee must surely understand that the confirmation of Mr. Bell will be a provocation to discord, disunity and disaffection which will corrupt the fabric of our country like the slow decay of dry-rot or the sudden destruction of noxious acid on cheap cloth.

In the interest of Justice,

Rev. WYCLIFFE JANGDHARRIE,
Director, BEDC, Inc.

That ends my letter.

Senator MATHIAS. Thank you.

TESTIMONY OF MOHAMMAD KENYATTA

Mr. KENYATTA. My colleague, Reverend Jangdharrie—who I should point out besides being presently the director of the Black Economic Development Conference was until a couple of years ago the head of the metropolitan NAACP in Philadelphia, Pa.—my colleague has stressed two points which should be reiterated and remembered. First, that the nomination of Griffin Bell has an ungodly similarity to the Hayes-Tilden compromise which allowed white racists to replace chattel slavery with the equally oppressive system of Jim Crow about 100 years ago.

I raise this not as some statement of black paranoia but as a remembrance of a lesson of history. I think that just as we could not understand the concerns of the Jewish community in this country without an understanding of the holocaust, we cannot understand the deep antipathy, the passionate anger, in fact, that has been aroused by the Griffin Bell nomination if we don't understand the history out of which black concerns are formed.

Second, I think this committee has to realize that if it does, if this committee does recommend favorably, and if the Senate does confirm

Mr. Bell, that the Senate is, in effect, sounding a battle cry of attack on black America.

It would be our prophecy, our studied, educated guess, so to speak, that black people will indeed fight back with every effective means at our disposal.

The confirmation of Griffin Bell is an invitation, indeed, a provocation, for blacks and other minorities to revise and expand the massive militant protest movements which were necessary to put our concerns on the agenda back in the turbulent 1960's.

I think that this committee has heard these words, or similar words, earlier today from Rev. Jesse Jackson and that this committee ought to consider that part of its responsibility is to look toward the effects of its decision, the effects of the decision of the entire Senate.

I think it is safe to say that the effects of a confirmation of Griffin Bell would be an effect that would lay the seeds for disruption, for discord, for alienation, for disunity, for all of those things that all of us are trying to recover from after Watergate, Vietnam, and Angola.

There are additional factors that cannot be ignored. Reverend Jandbharrie has asked me to speak particularly on my experiences as a representative with the United Nations nongovernmental organization section, and I want to say something about that. But even before that, I think we have to look at what seems to be a racist double standard in operation with Mr. Carter, with the Senate confirmation process, and with backroom politics here on Capitol Hill.

The proof is this: When a handful of folks in the intelligence community and a few Senators got cold feet about Ted Sorensen heading the CIA, the wheels began to click. Things began to happen. It was quickly arranged for Mr. Sorensen's nomination to be withdrawn by Mr. Sorensen, himself.

But when black leaders, civil rights advocates, and people representing millions of little Americans have told this Senate and told the world that we object to having a card-carrying segregationist, a country club racist, in the Attorney General's Office, then much of Capital Hill opinion seems to want to treat our righteous indignation like a tempest in a teapot.

I think it is important for us to understand that the eyes of the world are indeed on these committee hearings. I travel a great deal abroad in Africa, Asia, Europe, Latin America, and the Caribbean. I have spent time at the United Nations. I walk the corridors of the United Nations. I hear from and talk with African dignitaries closely by on Embassy Row here in Washington, D.C.

As a Christian minister involved in overseas mission, I reflect and worship with my African fellow worshippers, fellow Christians, who are an important and vital link between their nations and this Nation.

What I hear is this: That the sensitivity of the U.S. Government to people of African descent in the United States, itself, is a litmus test for the world recognition or understanding of American intentions across the globe.

Let me assure you that our country's image in the eyes of the world will suffer a setback from one Attorney General Griffin Bell that cannot be overcome by one hundred Ambassador Andrew Youngs.

We are not fools, or people are not fools, and the world is not peopled by blind folks. The picture is clear. If the Carter administration,

with the complicity of the Senate and this committee, will shove a Griffin Bell down the throats of the very same black voters who insured Mr. Carter's election, then surely America's other pretensions and promises at home and abroad must be and will be suspiciously regarded as either temporizing expedience or brass-fronted hypocrisy.

I have a last remark. We mentioned that the Attorney General's position was an important one, in part, because of its stance, its responsibility vis-a-vis the Federal Bureau of Investigation. We all know, we are all honest enough people to know what kind of hell, embarrassment, disgrace the former—that Mr. J. Edgar Hoover had for us when he ran amuck, uncontrolled by the Attorney General.

I have personally and the organization with which I am affiliated has been involved for a number of years in litigation concerning the FBI challenging the counterintelligence program and certain other programs to disrupt the civil rights movement in the South particularly through the 1960's.

I worked for years in Mississippi and was victimized by that program, victimized by that program to the extent that my wife and children had to steal away in the dead of night, not just from the Klansmen and the hooded hooligans but from the very FBI itself. I refer you to *Kenyatta v. Hoover*, now *Kenyatta v. Kelley*, a case being handled primarily by the American Civil Liberties Union. I refer you to Attorney General Levi who has himself commented on the ugly kinds of things that the FBI undertook during that period.

I say this to you, Senator, that if we are concerned that these kinds of official criminalities are not repeated, it would be as big a mistake to entrust Mr. Bell with the FBI as to entrust my child with the atomic bomb.

Senator MATHIAS. Your reference was to the Cointel program?

Mr. KENYATTA. Yes, sir, the counterintelligence program.

Senator MATHIAS. We, as you know, have had Judge Bell for a good many hours at the table where you are now sitting.

Mr. KENYATTA. Yes.

Senator MATHIAS. One of the things that we have asked him, in great detail, is exactly what his intentions would be in the direction of the FBI, for example. We asked him about dealing with the intelligence community generally. We have on record in the transcripts of these hearings very specific assurances as to the protection of civil liberties of American citizens and all the areas under his jurisdiction. Does this in any way mitigate your concern?

Mr. KENYATTA. No; it does not, Senator, because of this. Let me just say very briefly, an analysis of the Cointelpro documents, and an analysis indeed of much of the FBI domestic surveillance, much of which, of course, has since been regarded as illegal, an analysis indicates that a great deal of that was aimed particularly at black communities, that, in fact, there seemed to be some kind of obsession. I have friends who are blacks within the Federal Bureau of Investigation who, you know, privately have spoken of and confirmed what the statistics show, a kind of obsession with repression of the black movement.

What we see with Mr. Bell's record, as has been indicated by the people from Georgia and the people from Corpus Christi. Julian Bond, Reverend Jackson, and others, what we see in Mr. Bell's history is a

predeliction toward that same kind of racial bias. That is why I say it would be very, very difficult, very, very disturbing, I think, for that to happen.

Clearly, whoever is going to be calling the shots as the Attorney General, having that relationship with the Director of the FBI, would have to be a person who not only has a record that is clean in terms of racial discrimination but would have to have a record that would indicate an aggressive desire to clean up the racist mess that has pre-existed.

Senator MATHIAS. In other words, you draw a distinction between merely obeying the clear precept of law and moving the law forward?

Mr. KENYATTA. Yes; certainly there is a question of affirmative action with Mr. Bell. There is also a negative situation here.

Senator MATHIAS. There are a number of cases that we have discussed with Judge Bell where he says that, given the circumstances of today, he was clearly wrong. He says, I think in discussing the *Bond* case if I remember his words, he says: I was obviously wrong.

You are a Christian minister?

Mr. KENYATTA. I am.

Senator MATHIAS. Judge Bell says that he believes in redemption. Do you believe in redemption in a case of this sort?

Mr. KENYATTA. I do. But what is brought to mind is, in fact, a quote not from the Bible but from Shakespeare: "But that was in another country and besides the wench is dead." The victims of Mr. Bell's mistakes, some of them, are not dead. It was not in another country, it was here. The question of redemption is not the question we are looking at here. The question that we are looking at is a question of judgment.

It was crystal clear to me, I hope to you, certainly to most of the the people in this country, at least outside the southern region, that the *Bond* decision was an incorrect one. I should point out, however, that the effect of that decision—as late as 1966 there were incidents in Mississippi where there were threats of violence against people who happened to be opponents of the Vietnam war as well as proponents of the civil rights movement. I don't believe that this was simply some devilish possession that had taken hold of many of the whites in Mississippi. To the contrary, I believe that the action of Mr. Bell and others was an action that convinced people that opposition to the war, to have a disagreement about U.S. foreign policy, was in fact a breach of the law.

I think it is not enough simply to say I was mistaken. I have not heard from Mr. Bell a comprehension of the magnitude of the mistake, nor do I think it is wise for us to trust to those who make obvious mistakes the authority and responsibility resident with a position like that. If he was not so then, what has made him so smart now?

Mr. JANDBHARRIE. Mr. Bell reminds me of a lizard who changes its color to suit the environment only for protection and his admission of guilt is no more than that.

Senator MATHIAS. You would apply the law, then, that we apply in the case of the owner of a dog. He is not subject to civil liability on the dog's first bite but after that he has to pay?

Mr. KENYATTA. I think that makes sense, as a rule of thumb, but I think that what we are saying is that if we are going to move ahead,

and particularly if we are going to move ahead in a country that is not racked by the kind of discord that racked this country a few short years ago, then we cannot afford to make the same mistakes again.

Further I am saying this Theodore Sorensen thing is something that really, I think, has to be thought about. Why is it that when certain kinds of objections are raised, and certain kinds of concerns are raised—I say this, by the way, not at all to cast aspersions on Mr. Sorensen, that is not the question here—when certain kinds of questions are raised in the intelligence community, or among people in Congress who have been close to the intelligence community, then suddenly things begin to happen. Yet when even more basic questions of human rights are raised by folks who are like 13 percent of the population, 25 percent of the Democratic Party, and perhaps 50 percent of those who have been victim to human rights abuses, when we say, “Hey, look, why don’t you all back up?”, what is clearly being said to the black community by the actions of those on Capitol Hill, not only politicians, I must say also the press and how the whole thing has been dealt with, what is clearly being said to people in our communities is that: “Your voice doesn’t count the way other peoples’ count.” The nomination of Mr. Bell will confirm that.

Mr. Jackson was not making a threat when Jesse was saying this morning about the possibility of people leaving the suits and hitting the streets. I don’t know if he is talking about himself, or who he is talking about, Mr. Jackson doesn’t have to do that. Reverend Jandbharrie or Reverend Kenyatta don’t have to do that. If Mr. Bell is confirmed it will be a clarion call for black America to raise some hell for our rights as our last alternative.

We have gone through the electoral process in an amazing show of discipline, an amazing show of respect for the American political process, just last November, and here a few months later we are being told that, “Hey, you know, your vote and your voice doesn’t count.” It’s a serious thing.

Mr. JANDBHARRIE. That is like saying that Mr. J. B. Stone is now ready to go to church and forget all his threats about “niggerism,” as he put it, when he was running for office. I don’t see how, in God’s name, the Senate and decent-loving people could confirm the nomination of Mr. Bell. To do that would be, as Reverend Kenyatta has said, a direct kick in the backside of all Americans.

Senator MATHIAS. I thank you both very much.

I want to add to my thanks for being here just a word of appreciation for the work that you have done in your own pasture. That is in the field of drug abuse, and of trying to help those who have been subject to that terrible scourge and to keep others from falling into that same problem. It is one of the most important works that anyone can do today. I am sure that the other members of the committee will want me to join them in thanking you for what you are doing in that area.

Thank you very much.

Mr. KENYATTA. Thank you very much.

Senator MATHIAS. Laverne Royal?

Mr. RAUH [interrupting]. Senator Mathias, I was asked by Senator Bayh to produce some materials of cases by Griffin Bell for the period after August 2, 1972, and about which I testified.

I understand the record is being closed and I would like to offer this as the material which Senator Bayh asked me for, even though he is not here. It can go in the record at the point where he asked me to supply it.

Senator MATHIAS. I would direct that it be admitted in the record and would ask you if you have more than one copy?

Mr. RAUH. I do have.

Senator MATHIAS. If you will give the original to the reporter, I would personally be interested in seeing a copy of it.

[The material referred to follows.]

RAUH, SILARD AND LIGHTMAN,
Washington, D.C., January 19, 1977.

HON. BIRCH BAYH,
U.S. Senate, Russell Building,
Washington, D.C.

DEAR SENATOR BAYH: At the hearing on the nomination of Griffin Bell, I testified that, at least from 1958 to 1972, Mr. Bell gave aid and comfort to the segregationists. I referred to the roadblocks to segregation he put forth in the *Austin* and *Corpus Christi* cases decided on August 2, 1972 as the fourth stage of Mr. Bell's pro-segregation attitude (massive resistance, massive recalcitrance, freedom of choice, roadblocks). You asked that I review the school desegregation decisions in which Judge Bell participated between August 2, 1972 and the time he left the Fifth Circuit in 1976. I did so, albeit under severe constraints of time, and submit this statement for the record.

The school cases in which Judge Bell either wrote the opinion or otherwise participated since August 2, 1972 are listed below:

Ellis v. Board of Public Instruction in Orange County, 465 F.2d 878 (5th Cir. 1972).

Lee v. Macon County Board of Education, 482 F.2d 1253 (5th Cir. 1973).

Davis v. Board of School Commissioners of Mobile County, 483 F.2d 1017 (5th Cir. 1973).

NEA v. Board of School Commissioners of Mobile County, 483 F.2d 1022 (5th Cir. 1973).

Lee v. Macon County Board of Education, 483 F.2d 242 (5th Cir. 1973).

Lee v. Macon County Board of Education, 483 F.2d 244 (5th Cir. 1973).

Bassett v. Atlanta Independent School District, 485 F.2d 1268 (5th Cir. 1973).

Jones v. Caddo School Board, 487 F.2d 1275 (5th Cir. 1973), 499 F.2d 914 (5th Cir. 1974).

Cornist v. Richland Parish School Board, 495 F.2d 189 (5th Cir. 1974).

Gooden v. Mississippi State University, 499 F.2d 441 (5th Cir. 1974).

Wright v. Baker County Board of Education, 501 F.2d 131 (5th Cir. 1974).

Herefore v. Huntsville Board of Education, 504 F.2d 857 (5th Cir. 1975).

Sweet v. Childs, 507 F.2d 675, rehearing denied, 518 F.2d 320 (5th Cir. 1975).

United States v. Texas Education Agency, 512 F.2d 896 (5th Cir. 1975).

Morales v. Shannon, 516 F.2d 411 (5th Cir. 1975).

United States v. Hinds County School Board, 516 F.2d 974 (5th Cir. 1975).

Ingraham v. Wright, 525 F.2d 909 (5th Cir. 1976).

You asked me for an "objective" statement as to what these cases demonstrate concerning Judge Bell's views on school desegregation after August 2, 1972. I believe it would not be unfair to draw the following conclusions from these cases:

1. Judge Bell at no time went one iota beyond the minimum necessary to comply with repeated previous decisions concerning desegregation of the schools.

2. Judge Bell showed no recognition that he had given aid and comfort to the segregationists in the four stages to which I testified, nor did he show any slightest repentance for what he had done earlier.

3. If anything, the cases show a continuation of hostility towards integration. I cite just one example from 1975. In *Sweet v. Childs*, a discipline case, Judge Bell refused to expunge from the school records of 120 Black children punishment meted out without notice to the students of the consequence of their actions. As Chief Judge Brown said, dissenting, "The mass suspensions that Principal Centers invoked that afternoon lasted technically only a few days but as a practical matter their effect continues up to the present day because the suspen-

sions remain a part of each student's permanent school record. Such reports could obviously be a substantial reflection on their career options long after they have left school. These students are actually being punished for violating an order that was never given—a sanction that goes to the core of due process. It is unquestionable that these students are vested with a Fourteenth Amendment 'liberty' interest by virtue of these records and their ramifications."

I would appreciate this letter being entered into the record.

Sincerely,

JOSEPH L. RAUH, Jr.

Mr. RAUH. Thank you.

Senator MATHIAS. Mr. Royal, would you state your full name and address for the record?

TESTIMONY OF LAVERNUS ROYAL, CORPUS CHRISTI, TEX.

Mr. ROYAL. My name is Lavernus Royal. My address is 4738 Black-jack Place, Corpus Christi, Tex.

Senator MATHIAS. Do you have a statement you'd like to make to the committee?

Mr. ROYAL. My appearance before the committee is to relate to it concerning the desegregation case in Corpus Christi, Tex. and how one of the decisions from the Fifth Circuit Court of Appeals tended to delay desegregation in that particular city.

In order that the results of the appeals might be seen in its proper context, I would like to give you a brief background as to what led to the case itself.

In the city of Corpus Christi itself at the particular time that the case was filed we still had de jure segregation between blacks and whites.

However, at the top of the list on this particular case that was decided in Federal courts in Corpus Christi and against the Corpus Christi Independent School District, which it lost, is the name of a Mexican-American which changed the whole order of desegregation. I think, over areas of the country in that it placed the Mexican-American in the position that the black had been placed in before under *Brown*.

The Corpus Christi Independent School District built a high school which was de facto segregated and as a result——

Senator MATHIAS. What year was that?

Mr. ROYAL. This is 1968.

This was protected by various organizations within the community, both black and Mexican-American.

The Corpus Christi Independent School District refused to change the boundary lines and, as a result, members of the Mexican-American community, through a member of a labor organization, were able to file suit in Federal court to bring the Corpus Christi Independent School District to task. This was done.

The decision was handed down in 1970 against the Corpus Christi Independent School District, finding them guilty and then offering them the opportunity to correct situations which existed in the Corpus Christi Independent School District.

The judge, at that time, made the decision by placing the Mexican-American under *Brown* and courts then saw him in the sense that the black had been seen before.

The Corpus Christi Independent School District failed to come up with an acceptable plan—or a constitutional plan—and as a result of that the court saw fit to produce its own plan.

Upon producing its own plan, it was then appealed by the school district to the Fifth Circuit Court of Appeals, and at that time the judge who had originally heard the case had left the country and it was put in the court of another judge.

He granted a stay, which was overruled by the fifth circuit, and later upheld by the Supreme Court. Justice Black read it.

Eventually the Fifth Circuit Court of Appeals, on August 2, 1972, did hand down a decision in regard to the case that was filed by the Corpus Christi Independent School District and it upheld all the points that were found by the original judge except for the remedy.

This is the point that I bring before the committee today. In revising the remedy that was produced by the original judge in the case, it put the plaintiffs in the position of having to go back and go through everything that they had gone through before: in effect, to retry the case to offer the Independent School District of Corpus Christi another opportunity to offer a plan, and as a result of that, even though the decision was handed down in 1970 against the school district and ordered them to rectify desegregation in the system, just now in 1975 we finally got something concrete in the way of desegregation in the city of Corpus Christi.

In the meantime, and this was purely based on the decision that was handed down by the fifth circuit, they had the opportunity to go through all of the things that had been gone through in the trial, plus a few others that were interpreted into the decision that was brought to fifth circuit.

If I may, if the committee will indulge me thus, I would like to read from one of the dissenting judges, or one of the minority. A group of the minority judges had written in their opinion what they felt of the majority, of which Judge Bell was part, what they felt of the decision they were making. Do the members of the committee have it?

Senator MATHIAS. Go ahead.

Mr. ROYAL (reading) :

In short, every single finding of fact that is necessary to support the majority's substantive reasoning has already been made.

Senator MATHIAS. This is Judge Wisdom's comments on the case?

Mr. ROYAL. Judge Goldberg's.

Senator MATHIAS. I see.

Mr. ROYAL (reading) :

If the majority remand, the remedy that the majority has grafted onto the reasoning of the District Court and of this court will produce no substantive changes whatsoever in the trial court's original decree, except delay.

I am here to report to the committee that is exactly what it did.

It delayed the justice that was already handed down through the original trial judge, and since 1972, to 1975 we had no real progress in desegregation in the city of Corpus Christi.

I had been told or heard that one of the reasons—one of the things that Judge Bell would probably be about if confirmed would be to revise our system of justice in seeing that it would be more responsive to the people and that we could get fast results from our courts.

I only say here that I regret that this was not the case when he was a member of the Fifth Circuit Court of Appeals. If that had been so, the the citizens and the children of Corpus Christi would have been given what they were due, justly, under law, 3 years prior to the time that it was attempted to be brought about.

Not only was it delayed, it was so confused and mixed up that in the last decision that we had, which was in September, to finally desegregate the junior high schools, the Corpus Christi Independent School District who naturally had resisted, plus other groups within the city who were against desegregation, were actually asking for more transportation because the plans that they were getting at that time from the court were so bad that even the Corpus Christi Independent School District was against them.

They were actually asking for things, finally, that were originally decreed in Judge Sill's decision at the very beginning of the case.

We can see in the delay that was brought about by the Fifth Circuit Court of Appeals, not only did it hamper justice, the end result was not as effective, or still not, because we are not yet at the end of it. We will still have to do the high schools. The end result was not as effective as if the original order by Judge Sill had been carried out.

It has caused frustration within the black community, also within the Mexican-American community, and it has, in all sense of the word, hampered the quality of education in the city of Corpus Christi.

As a result of the confusion that has been caused or brought about by the delays and the different types of plans that we have had presented which did not necessarily desegregate our system, the whole city of Corpus Christi, as far as the standpoint of a political climate, has changed. As a result of that, we no longer have any minority representation whatsoever on the Corpus Christi Independent School District Board.

We can say, in effect, that the delay that was brought about from the Fifth Circuit Court of Appeals hampered the justice that would have come down through the original decision by the original Judge Sill in the case.

How I came to be involved in this was through the committee that was originally set up by Judge Sill actually taken from the community—four black members, four Mexican-American members, and four members of the Anglo community—to make up a committee to work as a mediator between the Corpus Christi Independent School District and the court.

We feel that in order for progress to continue to be made in desegregation that we must have people in all areas in judgment on cases understanding as to what is involved.

I think it was well spoken, by the peers of Judge Bell in the dissenting report on this hearing, that for some particular reason when it came to our case their whole attitude seemed to have changed.

We, I think, are the only school district in the Nation who has offered a computer plan to bring about desegregation with children.

The whole idea behind this was to eliminate as much transportation as possible and it did.

What it did is instead of the computer actually assigning students to be transported to schools, it simply assigned them to walk. As a result, we have children now in some of the elementary schools who

are walking great distances to school simply because through our computer assignment plan that came as a result of this reversal of the fifth circuit court remanding the original judge's order back to a new judge—simply through this we have now children under a hardship that would not have been under that hardship.

This is to the extent, now, that I say parents who were against desegregation, who were against transportation, also the school district who fought it, who never offered a plan that was constitutional, that eventually it did have to come through the court, to the extent that these groups were asking, at the beginning of school last September, that instead of the court's plan being ordered, which required less transportation, they were actually asking for a plan that required more transportation because it was fairer. It was nearer to the original court's decision.

Senator MATHIAS. Mr. Royal, you have given the committee an extraordinarily clear and precise picture of exactly the situation that existed. The effect of the majority's order in this case is clear. There is a demonstration that the warning that was issued by the minority of the court was, in fact, an accurate warning and that the dangers that they warned of did, in fact, come to pass.

I do not think that we can help but learn what you are trying to teach us, which is that the reasoning which brought about the majority opinion, if it were to be applied nationwide, that there would, in fact, be a considerable slowdown in the whole movement to attain equal rights for all Americans.

Am I restating your testimony correctly?

Mr. ROYAL. That is correct.

Senator KENNEDY. Mr. Royal, I apologize for not being here earlier for your testimony.

I have some knowledge of the factual situation and the procedures which were followed.

If you would not mind, perhaps you could repeat your statement and indicate briefly to me how in the appeal this order was amended. You touched on it while I was here, but I am wondering if you could summarize briefly your view of that amendment of the order after it was remanded.

Mr. ROYAL. After it was remanded, what happened was this: Even though it was from a legal standpoint, it allowed the school district, which had already been found guilty, to actually proceed through all of the effort supposedly attempting to bring about a constitutional system all over again, even from the standpoint of freedom of choice, which had already been outlawed or not accepted as an effective means or plan. We went through all of these over again, plus the offer to the school district to offer different types of plans that would be acceptable as constitutional. Of course these had to be rejected because they never offered a real plan.

Eventually, through this process of having to go through everything that had already been tried in court, it delayed the actual desegregation for some 3 to 4 years.

The result of that is that we now have in effect some of the parts of the original judge's plan that was actually remanded back to the district court.

As a matter of fact, the local school district and organizations that were against desegregation, or against transportation, as they put it, were actually asking for more transportation because they felt it would be fairer than the plan that we are working under now.

Judge Sills' plan, at the time that the fifth circuit reviewed it, they said it was too severe. But one thing that it did do is that it was fair for the whole community. As a result of what we are working under now, there have been protests in that it is not fair for the whole community.

Senator KENNEDY. I want to thank you very much for your testimony and thank you for your comments before the committee which helped explain this case and why you are concerned about the remanding order.

As I understand it, Judge Bell's position in this was in support of the remanding. Is that correct?

Mr. ROYAL. That is correct.

Mr. JONES. In addition to that, Senator Kennedy, Judge Bell is on record as referring to this case as encompassing his view of the role of courts in providing remedies in school desegregation cases.

That is why we felt it was very important for Mr. Royal, who has firsthand knowledge of the impact of this decision in Corpus Christi, to come forward.

Senator KENNEDY. We thank you very much.

I will ask if there are any other witnesses here or any of those who have testified before who would like to make any other comments. If there are, we will be glad to hear them.

Mr. Mitchell, do you have any additional testimony?

Mr. Clarence Mitchell has been perhaps the most diligent attendee of these hearings. His attendance record is better than that of the Senators.

We valued very highly your earlier comments and would be glad to conclude these hearings with any comment you would like to make.

TESTIMONY OF CLARENCE MITCHELL—Resumed

Mr. MITCHELL. Thank you very much, Senator Kennedy.

I would like to summarize what I think has been presented to this committee.

We started off with the charge that the nominee was involved in a plan or program to deny rights to black children.

We have testified at the outset that there was continuity in his conduct starting from the time that he served as chief of staff for the then-Governor of Georgia, who was a segregationist, running right up to the time when he was the judge who was, as he put it, the writer of the decision in this *Cisneros* case, which the witness from Corpus Christi has just described.

We also traced through the mischief that was created by the plan, which was supposed to be an enlightened plan.

Mr. Joseph Rauh pointed out in his testimony that the plan which was known as the Sibley plan was not really an effort to try to give people their rights. It was a more sophisticated approach to maintaining segregation.

Mr. Bell, of course, said he brought the Sibley Commission, which fathered that plan, into being, but he said that he was not responsible for its contents.

He also indicated that he was trying to serve as a moderating influence. His assertion in that respect was supported by several witnesses who came up here and who happen to be black.

While you were engaged in other business today, we presented the testimony of persons from Atlanta who were the plaintiffs in those cases. They did not feel that Judge Bell, acting in concert with the blacks who came up here to support him, had done them any favor.

Indeed, they felt that the action of Mr. Bell in concert with those blacks who worked with him was to the detriment of their rights, to the extent that we had the one witness who said he had to go all the way to California to get education on how to read when he was 8 or 9 years old. He has come back to us a mature man.

I think it is also important to remember that the credibility of those witnesses who came up testifying for Mr. Bell is at best dubious because, as was significantly demonstrated, they challenged Senator Mathias when Senator Mathias said that the name of one of the plaintiffs in the case was Fred Calhoun. They had never heard of Fred Calhoun; yet they were supposed to be experts on what was going on in the city of Atlanta.

We presented Mr. Fred Calhoun in the flesh here today. They had an altogether different person whose name was John Calhoun that they said was acting with them to delay integration.

I would just like to say this in conclusion: How long must the blacks of this Nation seek their rights under law?

So far as I am concerned, there never will be a time when I will fail to make use of the processes of the law. I love the law.

However, I am one person. There are many people who have lost faith in the judicial process. There are many who feel that it is a waste of time and money.

What we have done in bringing these witnesses here is in a sense one last eloquent effort to show that we have put our faith in the law and that we are willing to spend our money to vindicate rights.

These are just ordinary working people whom we have brought here. We have taken them from their jobs. We had to raise the money to pay their expenses. For many of them, this was their first visit to the seat of Government of this Nation. This was their first time to sit before what is, in fact, a tribunal and say in a forum what their problem is.

It seems to me that something is wrong in this country if, when people do all of those things and show the thread that is unbroken and running from the time that Mr. Bell was first involved in these things up to, certainly, as late as the *Cisneros* case—then it seems to me that this is something wrong if, as I fear will happen, this nomination will speedily go over to the full Senate and Senators of the United States will be asked to vote on it.

If that happens, it will be a fact that culpability does not simply rest with Mr. Carter for making this nomination. It rests with the entire process by which the nomination gets to the floor.

So, in effect, it will be the Government of the United States which has said to its black citizens that: Even though we profess equal rights

and even though we make court decisions, we will place in charge of the vindication of those rights one of the chief opponents who faced you in your days when you were trying in an orderly process to get what the court said you should have.

I cannot see, myself, how this committee and the members that I know so well can bring themselves to stand with this nominee. I cannot see how the U.S. Senate, which at this time is officered by the Democratic party and which contains many advocates of civil rights from the Republican party, I cannot see how all of those things can be brought to the defense of this nominee and that he can be placed in that high a position.

I thank you for your courtesy, but I feel cruelly wounded by what I have seen and heard and what I think will come to pass.

I will say this: We have a saying in my religious faith that: We are soldiers in the army and we have to fight until we die. We have to lift up the blood-stained banner. We have to hold it high. I intend to do that.

Senator KENNEDY. Mr. Mitchell, let me ask you this: If we were holding a hearing in 1958 on Lyndon Johnson for Attorney General, would your position be very much different than it is today?

Mr. MITCHELL. It would not, knowing what I know and knew then about the late President Johnson.

I knew him very well. He was the Congressman in the district where my brother-in-law, now deceased, was president of an institution. I had talked to him about his views.

His view was that he believed in desegregation. He supported the Supreme Court decision. He felt that in this country the Democrats were made up of segregationists, integrationists, and what not.

For that reason, he thought, and this is what he said to me over there in the Capitol building in his office: You know, I feel as long as the Democrats are in Congress and are working for economic advances, that segregationists and integrationists believe in alike, we are not going to have any trouble. The minute we try to pass legislation in the field of civil rights, that is when we are going to break up the party.

So he said he was in favor of it, if you could get it. He said further that he hoped that we fought executive orders and court decisions.

There were many, many times when he said to me: Clarence, you can get whatever you have got the votes to get.

Happily, there did come a time when we had the votes and he led the parade.

Senator KENNEDY. Remind us about what his position was in the 1957 Civil Rights Act.

Mr. MITCHELL. We finally got together a package which included recommendations made by the Truman committee, which was to uphold civil rights.

Senator KENNEDY. What was his position?

Mr. MITCHELL. He was in favor of that, but not one of the key parts that we favored.

Senator KENNEDY. Title III?

Mr. MITCHELL. Yes; which was added by Attorney General Brownell.

I personally took that package to Mr. Brownell. Mr. Brownell agreed with the recommendations of the Commission, which was active at that time.

On his own he thought up title III, which Mr. Johnson opposed. We had a very bloody battle about that, at least verbally bloody.

Senator KENNEDY. That is right.

Mr. MITCHELL. The disagreement was not with respect to objectives. The disagreement was based on the practical question of how many votes you can get for a given proposition, which in my judgment is different from the position—

Senator KENNEDY. Were you for striking title III of the 1957 act?

Mr. MITCHELL. No; the first time I ever saw a strong man cry was the late Senator Knowland, who was the minority leader and listed as a conservative Republican. I went to his office after we lost title III and he was so heart broken about it, and big strong that he was, he broke down in tears.

Mr. Dompierre, who was around here and some kind of an official, was there with us. The three of us were there in that office. It was a heart-breaking loss, but it seemed to me that we ought to try to push forward. Indeed, Mr. Nixon, who was then the Vice President, suggested that we hold off and not pass what was left of the bill. However, it seemed to me that we ought to push forward because we would break that notion that you could not pass any civil rights bill unless you changed the Senate rules. Happily, we got it passed and other legislation has followed.

Senator KENNEDY. Again, I want to reiterate our appreciation to you for your comments and for the work that you have done on this nomination.

You have been very eloquent in your concerns and expressions, and I think you have been very fair in presenting them.

Mr. MITCHELL. Thank you.

Senator KENNEDY. You have been tireless also in insuring that this committee was going to have the benefit of those who were most affected by a number of these decisions.

I think you know that this is an extremely difficult question which is put before this committee. No one is asking for easy decisions these days. You are making hard and difficult decisions all the times.

I am sure you understand the very sincere concern that many of the members have for the movement which you eloquently described and which I feel very strongly is the test of this country—whether we are going to be one country with one history and one destiny.

The question is whether this Nation is really unique in terms of the history of the nations of all the world and whether we will be able to achieve full rights for all citizens.

You have stated it very well. A number of people also have stated that very well.

I think you know from the membership of this committee the very strong allies that you have in that pursuit.

Once again, I want to thank you very much for your previous testimony and your comments here today and the work that you have done in this regard. It will be a valuable help to the members of this committee as well as to the other Members of the Senate.

Senator MATHIAS. I would join with Senator Kennedy in thanking you for the tireless effort you made.

It has not been partisan in any sense. I think it has been an attempt to help the committee arrive at a proper conclusion.

Mr. MITCHELL. Thank you.

Senator MATHIAS. I thank you for it.

Senator HEINZ. Mr. Chairman, I would like to compliment Mr. Mitchell.

Indeed, Mr. Mitchell, we owe a debt of gratitude not just to you, but to a large number of witnesses who have come from far and wide to aid in the deliberations of this committee.

I know you have been particularly helpful to some of them, identifying for the committee people who could be of help to us.

I know of no one who is more energetic, vigilant, or of more help to the committee than the present witness before us now.

I commend you. I thank you. I think most of the members of the committee would wholeheartedly agree.

Mr. MITCHELL. Thank you very much, Mr. Heinz.

I had the good fortune to stay at a place called None Such. I was there for a commission on law and economy of the American Bar Association this summer. I was told that the room in which I stayed was the room of your father or it may have been your grandfather. I do not know which. It was your family estate. It is now dedicated to, and I believe owned by, Yale University. As I was in that room, I thought about what the world was like in the days when your forebearers were young, I thought about what I have seen in your life, the promise of help to this country.

I get unhappy about reverses, but when I think about the people who are younger than I am, which would of course include Senator Kennedy, you, and others, I think eventually this country will come out on the right end. I think that it is people like you who will help us do it.

However I think we would get there a lot faster and with fewer casualties if we all adhered to a rule that past misdeeds, which are designed to deny people their constitutional rights, really make such persons who have been guilty of those misdeeds improper as selections for posts that involve important questions of civil rights and constitutional rights.

I would not quarrel one minute with the selection of Judge Bell as a person to have headed the Department of Defense or some other agency. It is the fact that he is the custodian of the promises of the Constitution which causes me, and those with whom I associate, to object.

Senator KENNEDY. Mr. Mitchell, let me give you the assurance that I know this committee, regardless of how it is going to vote on this, is going to insist and demand that those commitments that were made in the wide variety of areas of civil rights are going to be kept.

I know that you believe, as I do, that these are not commitments that are pledges to just one group of Americans but they are commitments to all Americans.

I think it is at least appropriate to the closing of these hearings to indicate the very strong commitment and feeling that I have, and I am sure others have, that those pledges are pledges that must and will be kept and that they will have considerable oversight of this committee in insuring that they are kept.

This is not just because they are made to members of this committee or in response to questions but because they are right.

I know that we have talked in the past about what value we might be able to expect of them. I am sure you understand that at least those to whom these commitments have been made do not treat them as light obligations or light responsibilities. We are going to insist that they be kept. We are going to need your help and your support to insure that they are. I am sure we will receive it.

Mr. MITCHELL. I would say, Senator Kennedy, that I am very familiar with the oversight function in government.

While I would share your hope that the promises made would be kept, I would not anticipate that the mere making of the promises will lead to them being kept, nor do I think that the power of these committees, once a nominee is in office, can be effectively used to make those promises live.

I forgot one thing which I want to make clear for the record. I had the distinction of being on the enemies list of Mr. Nixon. Indeed, I was very unhappy—

Senator KENNEDY. You were not alone on that list.

Mr. MITCHELL. I was unhappy because I was not on it. At least that is what I thought. I asked Senator Ervin if I was on it and he said no. It was only after some reporters made a search that they discovered that I was on it. I mention that because I knew Mr. Nixon very well. I had no animosity toward him for putting me on the list. But there was a suggestion made here today that maybe some people were afraid of reprisals. I do not really think there will be any reprisals for presenting testimony. I want to assure everybody that I could not care less about whether I have any difficulty from any source for what I have said.

I will not need the help of this committee to defend myself. In all of my years I have been able to do that. It really could not make any difference to me if somebody wants to have some reprisal against me. I do not think they will; but if they do, I will be waiting for them with appropriate reception.

Senator KENNEDY. Senator Bayh?

Senator BAYH. Knowing our distinguished witness and friend, I know that last remark is not meant to be a threat.

Mr. MITCHELL. No; a statement of fact.

Senator BAYH. Mr. Mitchell, I know from past experience that sticks and stones and threats do not dissuade you from the path of righteousness. You may not be concerned about recriminations. Some of us are or will be. I trust our relationship is such that if there is any inference or insinuation in this regard, you will not hesitate to let us know. I appreciate the fact that you have been totally candid. We have had a little exchange, perhaps a difference of opinion, between us. I hope you share my belief that we are still going in the same direction.

Mr. MITCHELL. Oh, yes, I do.

Senator BAYH. It is imperative that we get there.

Tomorrow at high noon we will be doing everything we can to see that we are able to fulfill some of those goals that have so far been denied us.

I appreciate the contribution you have made to these hearings.

Mr. MITCHELL. Thank you.

Senator KENNEDY [acting chairman]. The committee stands in recess.

[Whereupon, at 3:35 p.m., the committee recessed to reconvene at 4:05 p.m.]

COMMITTEE SESSION

Chairman EASTLAND. The committee will come to order.

Senator Byrd sent me a proxy. He says it is all right to vote it. I ask unanimous consent for that.

Senator THURMOND. I move it.

Senator KENNEDY. I will not object.

I think it is important that we understand what the rules are going to be for proxies.

Chairman EASTLAND. It takes unanimous consent. Anybody who is not here should have a right to vote.

Senator KENNEDY. I see.

For the rest of the session?

Chairman EASTLAND. For the rest of the afternoon, yes.

Senator KENNEDY. I have no objection.

Senator BAYH. I heard one word that said "afternoon" and the other one said "the rest of the session." Which do we mean? There is a little difference.

Chairman EASTLAND. It is this afternoon.

[Laughter.]

Chairman EASTLAND. The Chair hears no objection.

Are you ready for the question?

[No response.]

Chairman EASTLAND. The question is: Is the nominee to be approved and has the chairman the right, when the name comes up, to report him forthwith to the Senate with the recommendation that he be approved?

Senator THURMOND. Mr. Chairman?

Chairman EASTLAND. Yes, sir.

Senator THURMOND. I renew my motion to that effect.

Chairman EASTLAND. Is there objection?

Senator MATHIAS. Mr. Chairman, is discussion in order?

Chairman EASTLAND. If the committee wants to hear it. I thought we were coming here to vote.

Senator MATHIAS. We are.

Chairman EASTLAND. Is there any objection to this nomination?

Senator MATHIAS. It has been a very troubling question to me and I believe to other members of the committee. Before we vote, it might be useful just to state briefly—I will not hold up the committee. I will state what I feel. The impact of Senator Thurmond's motion is to implement those provisions of the Constitution which provide that the Senate shall advise and content to a nomination. We advise the President of the United States to make this appointment. I have stayed with these hearings fairly consistently throughout them. I must say that my opinion has shifted back and forth in weighing the evidence.

This afternoon I asked myself if this nomination were made by a Republican President, would I advise him to go forward with it. I have thought of the votes that I have cast against Judge Haynsworth and the votes that I have cast against Judge Carswell. I must say, Mr.

Chairman, that I would find it impossible to advise the President to go forward with this nomination.

Chairman EASTLAND. All in favor—

Senator RIEGLE. Mr. Chairman, I would like to be heard, if I may.

Chairman EASTLAND. Certainly.

Senator RIEGLE. I respect very much what the gentleman from Maryland has said. My own position is somewhat different in that I am not prepared at this time to concur in a positive recommendation, in terms of urging that judgment on others, to report the nomination to the Senate. Without that kind of affirmative language, that would be another matter. I have indicated to the President-elect that I have reached the judgment not to interfere with the reporting of his nomination to the Senate at this time. I will not today. However, in terms of specific, what I think of as strong supporting language in that motion of Mr. Thurmond, I would not be able to vote for that. So it would be my intention to vote present.

Senator KENNEDY. Mr. Chairman?

Chairman EASTLAND. Senator Kennedy?

Senator KENNEDY. Mr. Chairman, in the course of these hearings, I too, have been troubled by a great deal of the testimony and the evidence that has been presented to us over the period of these days. I think there are millions of Americans who look to this particular position not only as the enforcer of the laws already on the books, but also as a source for hope and initiative in the area of civil rights as well as in other areas which fall within the Justice Department.

I cannot fault, really, any response that Judge Bell gave in the fields of revamping the Criminal Code, the wiretap legislation, the importance of antitrust provisions, protection for Indians, and the whole range of different responsibilities which we have. But I, too, as others, have been very much troubled by what I think is basically, at best, a mixed record in the important area of civil rights.

I came away from this hearing, having listened to Judge Bell's responses, convinced that he is a man of very considerable integrity. I think, in spite of his responses to some questions which I wish he had answered differently in the area of civil rights, I find difficulty in questioning the fundamental character and integrity of this nominee. I take very seriously, although there were those who testified before our committee who questioned it, his commitment to implement not only the legislation that is on the books, but to move the cause of equality forward in the area of civil rights.

We have outlined those areas during the hearing. There is the housing area and the governmental agency area as these programs affect the people of this country. I personally believe that those commitments will be kept. It is on that basis of his commitment in those areas that I will vote in support of the nomination.

Chairman EASTLAND. Call the roll.

Mr. ROSENBERGER. Mr. McClellan?

Senator McCLELLAN. Aye.

Mr. ROSENBERGER. Mr. Kennedy?

Senator KENNEDY. Aye.

Mr. ROSENBERGER. Mr. Bayh?

Senator BAYH. Aye.

Mr. ROSENBERGER. Mr. Burdick?

Senator BURDICK. Aye.

Mr. ROSENBERGER. Mr. Byrd?

Chairman EASTLAND. Aye by proxy.

Mr. ROSENBERGER. Mr. Abourezk?

Senator ABOUREZK. Aye.

Mr. ROSENBERGER. Mr. Riegle?

Senator RIEGLE. I vote present.

Mr. ROSENBERGER. Mr. Sasser?

Senator SASSER. Aye.

Mr. ROSENBERGER. Mr. Thurmond?

Senator THURMOND. Aye.

Mr. ROSENBERGER. Mr. Mathias?

Senator MATHIAS. No.

Mr. ROSENBERGER. Mr. Scott?

Senator SCOTT. Aye.

Mr. ROSENBERGER. Mr. Chafee?

Senator CHAFEE. No.

Mr. ROSENBERGER. Mr. Heinz?

Senator HEINZ. No.

Mr. ROSENBERGER. Mr. Eastland?

Chairman EASTLAND. Aye.

Mr. ROSENBERGER. The vote is 10 ayes and 3 nays and 1 present.

The nomination is agreed to.

Chairman EASTLAND. The committee stands in adjournment.

[Whereupon, at 4:18 p.m., the committee adjourned.]

APPENDIX

BACKGROUND SUMMARY

Griffin B. Bell Attorney General Designee Confirmation Hearings

January 1977

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I. CRIMINAL JUSTICE ISSUES

A. CRIMINAL JUSTICE POLICY: Judge Bell stated that he intends to formulate a national criminal justice policy. The Deputy Attorney General would be given responsibility for supervising and integrating all matters related to the criminal justice system: the FBI, LEAA, the Criminal Division, U.S. Attorney Offices, tax fraud cases, criminal antitrust prosecutions, DEA, and the Bureau of Prisons. (1/11, 61, 168)

B. LEAA: Judge Bell expressed general support for the LEAA concept -- federal funding for developing methods of improving the criminal justice system. He pledged to undertake a "careful study" of all LEAA programs to determine their cost-effectiveness, terminate ineffective programs, and re-think the priorities for the large expenditures of this agency. Bell is concerned about reported mismanagement and heavy administrative costs at LEAA. He would give "priority" to LEAA assistance to state plans for speeding up the courts. (1/11, 120-121; 151)

C. JUVENILE JUSTICE: Judge Bell said that fashioning a juvenile justice policy -- particularly designing a strategy to prevent juvenile crime -- "would be perhaps the most serious part" of his approach to the criminal justice field. (1/11, 168) He specifically indicated his intent to:

- Increase coordination between the Justice Department and federal agencies with programs related to juvenile crime problems (e.g. HEW education programs). (1/11, 168)
- Follow the mandate of the 1974 LEAA Act and delegate coordination of all LEAA juvenile delinquency programs to the Office of Juvenile Justice. (1/11, 173)
- "Look for an answer" to the problem of school violence and disorder. (1/12, 49)

D. INTELLIGENCE OPERATIONS: ACCOUNTABILITY AND CONTROL

1. GENERAL APPROACH: Judge Bell pledged to control intelligence operations under his authority in a manner which would "protect the rights of American citizens, while at the same time being careful to protect the security of the nation." (1/12, 84)

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2. WIRETAPPING AND OTHER ELECTRONIC SURVEILLANCE

a. WIRETAP LEGISLATION AND WARRANT PROCEDURE: Judge Bell said that he believed that electronic surveillance could be conducted "under some restraints where you would safeguard the rights of American citizens." As a general principle, he opposes warrantless wiretapping of American citizens. Judge Bell is not prepared to decide whether the President has inherent power to conduct warrantless wiretaps in the foreign intelligence filed without "exhaustive study of the question." Nonetheless, Judge Bell stated that he would work with the Judiciary Committee to develop legislation that would provide a judicial warrant procedure for electronic surveillance against foreign intelligence targets. He agreed with the general approach of the Kennedy-Mathias bill (S.3197) introduced last session with Attorney General Levi's support. He said that he would recommend that President Carter sign such a bill. (1/11, 25, 148; 1/12, 3-5, 20)

b. THE BROWN CASE AND THE QUESTION OF INHERENT EXECUTIVE AUTHORITY

-Executive Authority: Judge Bell said that he did not believe that the concept of inherent executive authority should be used as an "open hunting license" for intelligence operations. Nonetheless, he would not want to be required to find an offense in a criminal statute before he can authorize surveillance where "there is some probable harm imminent to the country." He would want to very narrowly restrict the area of non-criminal conduct which might be surveilled. He noted that in the intelligence field some activities that require surveillance "might be so sophisticated that it would not be a crime." Judge Bell suggested that any intelligence activity directed against non-criminal conduct might be tightly restricted in a classified Presidential order to the Attorney General and in guidelines promulgated by the Attorney General. (1/12, 80-83)

-Brown Case: In his 1973 Brown decision, Judge Bell wrote in dicta that under the President's inherent power to protect national security. . .the President may constitutionally authorize warrantless wiretaps for the purpose of gathering foreign intelligence." In his recent testimony at confirmation hearings, Judge Bell said that although he was following the state of the law at the time, this 1973 opinion now appears "too broad in today's context." Judge Bell said that it was written "before we knew of the abuses that we now know of in

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foreign intelligence gathering." He said that the factual basis of the particular surveillance in the Brown case, which was examined in camera for security reasons, still seems adequate. But he now realizes that, in general, "there is more of a sharing of power between Congress and the President in this field." (1/11, 23-24) In light of the abuses revealed by the Church Committee and the recent reports of the sweeping powers of electronic surveillance technology, Judge Bell stated that he would urge "the President to accommodate to a system which safeguards the rights of American citizens." (1/12, 7)

3. OTHER SURVEILLANCE TECHNIQUES: Judge Bell testified that warrant procedures should be applied not only to electronic surveillance but also to other intelligence techniques such as mail openings and surreptitious entries. (1/12, 50)

4. OVERSIGHT, LEGISLATIVE CHARTERS, AND GUIDELINES

a. CHARTERS AND GUIDELINES: Judge Bell stated that he will assist Congress in designing legislation which will outline the authority of intelligence agencies and establish safeguards for individual liberties. Bell stated that he would favor a combination of general charter legislation and specific guidelines promulgated by the Attorney General, along the lines of Attorney General Levi's recent guidelines. He also made a commitment to establish the kind of systematic reporting to the appropriate Congressional committees which will make congressional oversight meaningful. (1/12, 50-51)

b. CHURCH RECOMMENDATIONS: Judge Bell also indicated that he would review the recommendations of the Church Committee and consider their application to the Justice Department. (1/12, 161)

c. INTERNAL INVESTIGATIONS: Judge Bell testified that Justice Department investigations of alleged illegal conduct by FBI agents in mail opening programs and other domestic surveillance will be "carried forward with vigor."

E. FEDERAL BUREAU OF INVESTIGATION:

Judge Bell pledged to "pay close attention to the FBI" to ensure that all FBI activities are run within the confines of the authority of the Attorney General. As a symbolic gesture to re-assert control over the FBI, Judge Bell indicated that he would consider setting up an office in the FBI Building. (1/11, 92-3)

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1. CHARTER AND GUIDELINES: Judge Bell stated that he would support Congressional efforts to draft a general statutory charter outlining the FBI's authority. He believes that a general charter should be supplemented by specific guidelines along the lines of those promulgated by Attorney General Levi. (1/12, 52)

2. INVESTIGATIVE PRIORITIES: Judge Bell intends to "upgrade" the FBI's investigative activities, shifting the focus to areas such as white collar crime, organized crime, and government corruption and leaving matters such as auto thefts to state police as much as possible. (1/12, 70)

3. FBI DIRECTOR: Judge Bell testified that he anticipates a change in the leadership of the FBI and that he will keep the Judiciary Committee fully advised about such developments. He noted that Director Kelley is 64 years old and is Director "at a time when many of the top people in the Bureau will be retiring over the next year or so." He said a specific time frame has not been set for this transition. Judge Bell intends "to counsel with Mr. Kelley with respect to whomever may be considered for the position of Director." (1/12, 68-69; 1/17, 82)

Judge Bell stated that he will not undermine the statute which provided a 10-year term for the FBI Director. He said that the legislative history of that statute makes it clear that the President may remove the FBI Director at any time and that the intent of the statute was to prevent removal for political reasons. Judge Bell said that he would respect the legislative intent and that neither Director Kelley nor any future FBI Director would be removed for political reasons. (1/12, 82-23)

Judge Bell read into the record his press release responding to various press reports about his intentions regarding Director Kelley:

"At no time have I stated that Clarence Kelley would be 'fired' as Director of the FBI. He is not being fired. "Continual reference to Mr. Kelley's being fired is unfair to a man who has given his life to public service. I intend to counsel with Mr. Kelley with respect to whomever may be considered for the position of Director. I do not know when this decision will be made, but it will be orderly and in the best interest of the country and the FBI. I am confident that Mr. Kelley will assist in any transition."

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- F. CRIMINAL CODE ("S.L"): Judge Bell stated that "because of the overriding importance of enacting a coherent and internally consistent federal criminal code" he concurs "in the present course of Senators McClellan, Kennedy, and others to sever the controversial provisions. . .and save them for consideration on their merits as individual pieces of legislation." (Response to Senator McClellan's written questions.)
- G. SENTENCING: Bell stated that "one means of eliminating disparities in the current [federal] sentencing system which is worthy of serious consideration is the establishment of legislative guidelines to assist judges in the determination of appropriate sentences." He also favors "establishing some process of appellate review of sentences on the federal level." (Response to Senator McClellan's written questions.)
- H. DEATH PENALTY: Bell stated: "I would not want to do away with the death penalty without considerable study. At present, I favor capital punishment laws to cover a narrow set of offenses such as aircraft piracy and the killing of a prison guard. The complex question of the efficacy of the death penalty as a deterrent to crime deserves careful examination." (Response to Senator McClellan's written questions.)
- I. PRISONS: Judge Bell stated: "One of the most troubling weaknesses of our federal prison system is its failure to really rehabilitate people. I am committed to improving the capacity of the prison system to provide education and other forms of rehabilitation for federal prisoners." (Response to Senator McClellan's written questions.)
- J. GRAND JURY REFORM: Judge Bell indicated that he is aware of abuses of due process in the grand jury system and would support some form of legislation that would safeguard the rights of grand jury targets. (1/11, 11-12)
- K. SPEEDY TRIAL: Judge Bell said that "both sides are helped" by adherence to the constitutional mandate for speedy trials: society is helped by rapid incarceration of the guilty; the accused is helped by rapid acquittal of innocent and by avoiding prolonged periods on bail if time must be served. Bell said he would accord priority to LEAA assistance to state plans for speeding the court processes. (1/12, 119-121)
- L. ORGANIZED CRIME: Judge Bell said that the FBI should give "high priority" to "bringing organized crime under control." (1/12, 71) Judge Bell also said that he saw problems with establishing Organized Crime Strike Forces as resident bureaucracies on a district-by-district

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basis parallel to each U.S. Attorney's office. However, he indicated that he would use strike forces in some cases to attack special problems. (1/11, 121)

- M. DRUG LAW ENFORCEMENT: Judge Bell stated that the Justice Department should focus its efforts in the drug law enforcement field on "major traffickers" and "get away from the idea of making statistics" by prosecuting low-level, local drug pushers who can be handled by state and local police. Judge Bell said that he would make an effort to improve coordination with other federal agencies in attacking narcotics trafficking. He would also consider merging DEA with the FBI. (1/11, 169-170)
- N. DECRIMINALIZATION OF MARIJUANA: Judge Bell stated that the federal government has insufficient resources to try to enforce penalties against the private use of marijuana. He stated that he would leave the matter of decriminalization of possession of small amounts of marijuana to the states. (1/12, 84)
- O. GUN CONTROL: Judge Bell indicated in his testimony that he favors "hand gun control, as distinguished from [control of] sportsmen's weapons". He believes that more progress should be made by providing national leadership to encourage state and local hand gun control programs. (1/12, 71-72)
- P. BANK RECORD SUBPOENAS: Judge Bell generally indicated that he would like to find a way to protect individual privacy rights by providing notification to citizens whose bank records have been subpoenaed while also avoiding the overloading of federal courts with hearings on each subpoena. (1/11, 117-119)
- Q. EXECUTIVE PRIVILEGE: Judge Bell stated: "I do not believe that...executive privilege should be used, as it has in the past, as a shield to hide from the judiciary or from the Congress information that is truly necessary for responsible decision-making by these branches." He wrote that he will "provide legal advice to the President on the limits of this doctrine irrespective of partisan political considerations." (Response to Senator Abourezk's written questions.)

II. JUSTICE DEPARTMENT POLICY

- A. ACCESS TO COURTS: Judge Bell stated support for various proposals to increase the access of all Americans to the judicial process. He noted specifically that:
 - 1) Neighborhood Justice Centers: He had developed, as Chairman of the Follow-up Task Force of the Pound

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Conference, the concept of "neighborhood justice centers": locations close to people's homes where they could settle disputes, instead of having to travel to a courthouse which in urban centers could be far from neighborhood. (1/11, 67-69)

2) Attorney Fees: He considers it "in the national interest" to pass legislation to allow the award of attorney's fees on the "private attorney general" theory, i.e., to parties who litigate in the public interest. (1/12, 77)

3) Habeas Corpus: He would consider the possibility of legislation to increase access to habeas corpus, if necessary. (1/12, 141-142)

4) Class Actions: He would work with the Congress to find ways of making consumer actions more effective. He suggested allowing a District Court discretion in certain cases to follow an "opt-in" class action procedure instead of the present "opt-out" procedure, if this would make a case manageable and thus insure that it would stay in court. (1/12, 55-57) Under present procedures class actions are often dismissed by district courts as being "unmanageable" because of the size of the class involved.

B. AFFIRMATIVE ACTION: Judge Bell made a strong commitment to employ members of minorities in important Justice Department positions, he added that he was confident that he could accomplish this goal without applying a double standards as he was having no trouble whatsoever finding well qualified women, Blacks and Mexican Americans who would compete with anyone under a system of merit selection. (1/11, 163-165) See Tab # 1. [Of course, he was pressured by Senator Scott into announcing that he already had selected Honorable Wade McCree, a Black United States Circuit Judge and "one of the most distinguished jurists in America," as the Solicitor General. (1/11, 63)]

C. DEPARTMENT MANPOWER: Judge Bell pledged to insure that the enforcement divisions of the Department have sufficient personnel to enforce the laws, and to seek more funds from Congress for that purpose if necessary. He requested a memorandum from Senator Bayh on areas in which the Senator felt there were existing manpower shortages. (1/12, 46)

D. INDEPENDENCE OF DEPARTMENT:

1. Judge Bell displayed a sensitivity to the need for a professional Justice Department divorced from politics:

-- He firmly stated that in any conflict between the interests of the President and the interests of the people, the duty of the Justice Department was to protect the

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people's interests. (1/11, 18-19)

--Judge Bell agreed with Senator Kennedy that the Department is a symbol for all Americans, that it bears an overriding responsibility for the protection of individual rights, and that it ought to be a source of inspiration and hope for millions of Americans who are in many instances left out of the legal system. (1/11, 28)

--Judge Bell noted that his decision to become Attorney General had been conditioned on Carter's understanding that the Justice Department would be run on a non-political basis. (1/11, 74)

2. Judge Bell promised many specific measures to insure the professionalism and independence of the Department:

a) U.S. Attorneys: Any United States Attorney who charged, investigated, or prosecuted for political reasons would be dismissed immediately. (1/11, 114)

b) Logs: He will retain and strengthen the existing Justice Department system under which contacts between the White House and the Department are "logged" for future reference. He is considering expanding it to include, if it does not already reach, "all political contacts, and perhaps all contacts," (1/11, 73) and plans to implement the system "throughout the Justice Department, not just [in the Attorney General's office]." (1/12, 73-74)

c) Campaigns: He will not become involved in the 1978 or 1980 general elections, whether or not he is Attorney General at the time. (1/11, 154)

d) Department personnel: He will pursue any warranted prosecutions within the Justice Department, whether of FBI personnel or others. (1/11, 150-158)

E. SPECIAL PROSECUTOR: Recognizing that an appearance of impropriety could arise in some instances if the Justice Department pursued certain investigations, he favors the establishment of a "triggering mechanism" under which someone outside the Department, perhaps, a judge, could establish a temporary Special Prosecutor. He is open to argument, and to being convinced, that a permanent Special Prosecutor is necessary. But he notes that "if the Justice Department were run in the proper fashion" there would be no need for a permanent Special Prosecutor. (1/11, 75-76, 106-107) See Tab # 2.

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F. CONFLICTS OF INTEREST: Judge Bell has moved to avoid personal conflicts of interest, and has promised to insist that his chief assistants take measures to avoid such conflicts:

1. Personal Disclosure: He submitted a complete financial statement to the Judiciary Committee during the hearings. (1/12, 163)

2. Law Firm Resignation: He submitted a statement concerning his complete severance from his law firm, and promised to issue a Department directive to insure that no matter would come to his attention on which he might have the appearance of a conflict. (1/11, 78-79) See Tab # 3. The President of Common Cause approved of Bell's statement. (1/14, 27)

3. Departmental Disclosures: He promised complete financial disclosure by persons named to be Deputy Attorney General. (1/12, 163) [He also suggested the possibility of such disclosure by persons nominated to judicial office. (1/12, 163-164)]

4. Disqualification: He stated to the Committee that he would disqualify himself from the Department's handling of the IBM antitrust litigation because King & Spalding had represented IBM. He did so even though the representation was so small that Bell had not even been aware of it. (1/17, 76-78)

G. RELATIONSHIP WITH PRESIDENT CARTER:

1. Judge Bell clearly recognized that he and his Justice Department would be under particularly close scrutiny, and would have to maintain particularly high standards of professionalism and independence, because of his long-standing friendship with Presiding Carter. He was forthright in his discussion of that friendship. (1/11, 71, 100-101) See Tab # 4.

2. He also volunteered a detailed discussion of those few things he did to assist President Carter's campaign. (1/11, 71-73; 1/17, 54-57) See Tab # 5.

-- he prepared the questionnaire used to select the Vice Presidential nominee;

-- he helped write two speeches for Carter;

-- he prepared a legal memorandum on the subject of the pardon;

--he suggested the names of two Atlanta men to organize a fund-raising breakfast before the Pennsylvania primary, and donated \$1,000 at that breakfast.

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3. He also stated that he had helped Carter try to find a nominee for Attorney General, hastening to emphasize that he had not sought the job for himself and had been surprised when it was offered. (1/12, 89-92) See Tab # 6.

4. Judge Bell was equally candid in informing the Committee of those areas concerning the Justice Department that he had discussed with Carter, as well as those that he might feel compelled to discuss with him in the future. (1/12, 16-17; 19-20) See Tab # 7.

5. While he understood the concerns engendered by his close ties to Carter, Bell vigorously defended his personal integrity and argued that ultimately people would have to rely upon that. (1/11, 105-106)

6. He noted that less than a year after going on the Fifth Circuit he had ruled against Governor Vandiver in a major case, and that after he had several times ruled against school districts in his home area, someone said of him that he would rule against his own mother. (1/11, 105)

7. Bell also stated that he would resign if asked by Carter to do something which Bell considered improper. (1/12, 136) See Tab # 8.

8. No one on the Committee questioned his integrity, and Leon Jaworski expressed full confidence in Bell's ability to run the Department with independence and full integrity. According to Jaworski, Bell's experience as a federal judge -- one of the most independent officials in the world -- would prepare him to act independently as Attorney General, and Jaworski himself "would not think of going to this man and asking him for anything that I did not believe was 100 percent just and fair. . . [and] even at that, it would not surprise me if he turned me down." (1/13, 71)

9. Despite his own and others' confidence in his integrity and independence, Judge Bell stated that he will not deal initially with any matter involving Carter (or Mondale, or any Cabinet member), but will refer it to a lower level of the Department and allow it to work its way to him according to normal Department procedures. (1/17, 67-69)

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H. ANTITRUST ENFORCEMENT: Judge Bell promised a vigorous antitrust enforcement policy:

-- As "one of the first things I will do" (if confirmed), Bell promised to investigate to insure that the Antitrust Division and its regional offices "are pursuing a vigorous course and enforcing antitrust laws,". (1/12, 26)

-- He proposed using currently available funds (\$10 million authorized and appropriated) to establish antitrust divisions in the offices of state attorneys general, to assist the states in bringing suits. (1/11, 152)

-- He stated his intention to use several means to assist the Department in handling complex antitrust litigation: (1) studying ways to simplify complex litigation; (2) appearing personally in a slow-moving complex case in order to "get the judge's attention" and get the case moving; (3) hiring expert trial lawyers on a temporary basis for special litigation. (1/12, 30-31; 1/17, 74-75)

-- He promised to seek severe penalties for price-fixers, and to appear personally at sentencing hearings to dramatize the need for such penalties. (1/12, 65)

-- While he generally favors the creation of a Consumer Protection Agency, he stated that a study was needed to ensure that it would not be a third, overlapping antitrust enforcement branch (along with Justice and the FTC). (1/11, 157)

I. CIVIL RIGHTS ENFORCEMENT: Judge Bell stated his basic intention regarding civil rights as follows:

" . . . I intend to have a vigorous Civil Rights Division. I intend to have people there who will carry out the law. I have no hesitancy about that at all." (1/11, 90)

Judge Bell also stated his position on several other civil rights issues:

1. Busing: Concerning busing, he emphasized that complicated urban desegregation cases could not be resolved by a simpleminded edict, but--consistent with his judicial opinions-- he also supported busing as one part of a total remedy. (1/11, 88-91) He opposes any legislative effort to restrict the equitable powers of the courts to deal with segregation. This clearly includes the power to order busing where necessary. (1/11, 145)
See Tab # 9.

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2. Sex Discrimination: He expressed the opinion, as a matter of constitutional law, that the Fourteenth Amendment should be interpreted to make sex discrimination constitutionally suspect criteria, as in the case of racial discrimination. Since the Supreme Court has not so interpreted the Amendment, he sees a need for the Equal Rights Amendment to perform that task. (1/11, 147-148; 162)

3. Federal Programs: He pledge strong enforcement of the laws against discrimination in federally assisted programs, or by federal contractors. (1/11, 145-146)

4. Restrictive Zoning: He stated that the Justice Department under his leadership would use the open housing laws against restrictive zoning and other land use regulations that excluded minority housing. He believes that breaking up residential segregation is preferable to placing the burden of desegregation on school children. (1/11, 143-144)

5. Voting Rights: Stating that the right to vote is "the most important right" of Americans, he promised to argue for the constitutionality of the Voting Rights Act; he did state that he would like to see its coverage extended to the entire country, "to wherever anybody's right to vote is interfered with." (1/12, 114-116)

6. Indian Rights: He indicated a desire to emphasize Indian rights, and promised to review present procedures for handling Indian land claims to ensure the Government has no conflict of interest. (1/12, 121-122)

J. JUDICIAL ADMINISTRATION AND MERIT SELECTION:

1. Judicial Administration: Testimony at the hearings revealed that Judge Bell has participated in, and led, many efforts to improve our judicial system. (1/11, 10-11; 126-129). See Tab # 10.

2. Particular Improvements: During the hearings Judge Bell stated his support for two measures to improve the federal judiciary: legislation (S.1110, the "Nunn Bill") to establish a procedure for lodging complaints against judges and for removing those found guilty of misconduct (1/11, 67); and selection of judicial nominees by independent panels on the basis of merit.

3. Circuit Judge Merit Selection: Bell promised that President Carter would implement a merit selection system for United States Circuit Court Judges by Executive Order soon after taking office. The Order will set up several commissions of lawyers and nonlawyers, chosen

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by the President, who will seek out and investigate potential nominees and ultimately submit a list of five names to the President, from which he will select his nominee. (1/11, 44, 111-112) The American Bar Association will continue to screen candidates, but for the first time the National Bar Association (with 7,000 black lawyers) also will have input. (1/11, 95) Under this system "the Senators would retain their prerogative of saying that they did not like the nominee or did not like any of the nominees. There would be no disturbance of the present relationship, where the Senate advises and consents." (1/11, 45)

4. District Judges: Bell and the President do not plan to set up such commissions for the selection of nominees to the United States District Courts, but hope to work with the Senators to encourage them to set up state commissions to select them. (1/11, 45, 95-96) Bell also plans to move toward merit selection of United States Attorneys, through consultation with the Senators, and to consider present U.S. Attorneys for retention on the basis of merit. (1/11, 42-44, 96)

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III. FIFTH CIRCUIT RECORD:

A. SCHOOL DESEGREGATION: During the 15 years on the the Fifth Circuit, Judge Bell participated in over 140 school desegregation cases. The following six cases have been discussed by the press and by witnesses during the confirmation hearings.

1. United States v. Hinds County School Board, 5 Cir. 1969, 423 F. 2d 1264.

(a) In the summer of 1969 the Supreme Court reversed and remanded the Fifth Circuit decision in Alexander v. Holmes County, 417 F. 2d 852 (Brown, Thornberry, Morgan) granting a government requested delay in the development and implementation of desegregation plans in 33 separate school cases in Mississippi.

(b) Chief Judge John Brown assigned Judge Bell to take charge of the 33 cases. Judge Bell, working with Judges Thornberry and Morgan, reviewed the desegregation plans proposed by HEW and the individual plaintiffs in those cases, revised those plans where necessary, and then ordered the 33 school districts to implement those plans within 60 days.

(c) This case changed the course of school desegregation in the Fifth Circuit. Prior to this decision, when the Court of Appeals found a district court order to be inadequate, it would reverse and remand with an order for the district court to develop a new plan. During the long process of litigation and appeal, the school system would remain segregated until finally, often after years of appeals, a plan would be approved. The status quo during the litigation process was segregation.

(d) In this case, Judge Bell launched the Fifth Circuit on a new course of action. Instead of reversing the inadequate district court plan and remanding for the district court to write a new plan, Judge Bell, Thornberry and Morgan took the record in each case and wrote their own plan and ordered the defendant school board to implement that plan. Of course, the plans written on the basis of a cold record were not perfect and Judge Bell recognized there would be modifications in the plans he ordered. But he changed the status quo. During the ensuing appeals process, the status quo was an integrated system which Judge Bell had ordered the school boards to implement. The appeals concerned refinements on that system.

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(e) On November 7, 1969, Judge Bell called all the defendant school boards and the plaintiffs in the 33 cases to the Federal court house in New Orleans and explained that the time for delay was over. The schools must be desegregated now; that was the law of the land. He issued the individual orders which involved massive reassignment of pupils, reconstitution of bus routes and rearrangement of classrooms and school buildings. Then Judge Bell told the defendants that they had 60 days to comply. The conversion from dual school systems to a unitary non-segregated school system had to be accomplished by December 31, 1969.

(f) Willie Morris gave a moving account of the aftermath of Judge Bell's order in one of those districts in his book Back to Yazoo.

2. Turner v. Goolsby, ND Ga. 1965, 255 F. Supp. 724, Supplemental Opinion, 1966.

In this case Judge Bell wrote a per curiam opinion for the three judge district court in which he placed the school system of Taliaferro County, Georgia in receivership after recalcitrant county officials closed the white schools and began sending white children to adjoining county schools, in defiance of the court's order to desegregate the school system. Recognizing the difficulty that would be involved in trying the school board for contempt in its own community, Judge Bell placed the school system in receivership and named the State School Superintendant as receiver. This imaginative course of action was followed recently in the Boston school case, citing Judge Bell's opinion in Turner v. Goolsby.

3. Harkless v. Sweeny Independent School District, 5 Cir. 1970, 427 F. 2d 319.

This case involved a suit for back pay by Black teachers who had been dismissed when the court-ordered desegregation

of the school system resulted in a significant loss of students to private schools. The teachers claimed that the county school officials had discriminated against them in failing to renew their teaching contracts while at the same time retaining a disproportionately greater number of white teachers in the system. The district court dismissed the case for failure to state a cause of action. Judge Bell reversed and held that the plaintiffs had stated a claim under § 1983 and that the claim should be heard by the district court without a jury, recognizing that a jury in the majority white community might be prejudiced against the plaintiffs.

4. Evers v. Jackson Municipal Separate School District, 5 Cir. 1964, 328 F.2d 408.

Judge Bell wrote the opinion for the majority, which reversed the District Court for the Southern District of Mississippi, which had dismissed the segregation complaints on the theory that Negro students failed to utilize or exhaust available administrative remedies relating to the assignments of pupils to schools. Bell held that since Mississippi law requires segregated schools, Negro students, who had unsuccessfully petitioned school boards to permit assignment of Negro students without regard to race, could maintain the actions without utilizing or exhausting administrative remedies. This case is generally considered a plus for Judge Bell by newspaper reports.

B. Busing Decisions - Corpus Christi and Austin Cases

1. Cisneros v. Corpus Christi Independent School District, 448 F.2d 1392 (1971), 467 F.2d 142 (1972).

This is a Mexican-American school desegregation case. In the first case Judge Bell dissented from the panel opinion because he thought the case should be heard en banc due to the substantial questions of first impression presented. The rest of the court agreed to hear the case en banc and in the second opinion Judge Bell wrote the remedy section for the court sitting en banc. This remedy section is viewed as setting forth the classic remedy guidelines for the Fifth Circuit. It was criticized during the hearings as providing for substantially less busing than some civil rights leaders would advocate.

In this remedy section Judge Bell sets out the steps the district court should follow in fashioning a desegregation plan. Those steps include redrawing school zones, pairing or clustering of contiguous schools and finally, if those measures are not sufficient, then student transportation. Busing is to be the remedy of last resort. However, the

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opinion is quite clear in stating that if, after applying the other methods of desegregation vestiges of the segregated system still remain, then busing must be employed to complete the job of desegregating the system.

2. U.S. v. Texas Education Agency (Austin), 5 Cir. 1972, 467 F.2d 142.

(a) In this case the Fifth Circuit en banc reversed a district court decision denying relief to the Mexican-American plaintiffs and ordered the district court to proceed immediately to develop a plan to desegregate the Austin school system.

(b) Judge Bell's concurring opinion was the opinion of the court on the issue of the remedy to be employed by district court. In this opinion, Judge Bell repeated the guidelines set out in the remedy section of the Corpus Christi case and once again stated that cross-town busing was to be only part of the total remedy and was to be employed to the least extent necessary to desegregate the school system.

(c) Seven judges joined Judge Bell's opinion while four judges joined the dissenting opinion of Judge Wisdom who took the position that other methods of desegregating the school system (e.g., redrawing attendance zones and pairing of contiguous schools) were unworkable in that case and that a comprehensive cross-town busing plan was the only feasible remedy.

3. Judge Bell stated in his testimony that like most other Americans he favors neighborhood schools. However, when assignment of students to the school nearest their home, and the pairing or clustering of contiguous schools does not suffice to desegregate a formerly segregated school system, then busing is a necessary and proper remedy.

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C. Atlanta School Case: Judge Bell's Role1. Background - the Vandiver Period

a) The Atlanta school case, originally filed in 1958, was in continuous litigation over a period of 15 years before being finally settled in 1973.

b) The first district court decision in that case was issued in July 1959 when Judge Bell was serving as "Chief of Staff" to Governor Vandiver.

c) Judge Bell was one of five lawyers who participated in a meeting with Governor Vandiver at Governor's mansion in July 1959. The purpose of the meeting was to discuss proposal by Vandiver's political advisors that the Governor should seek to intervene in the case so that he could appeal the district court decision. Neither the Governor nor the state was a party in the case. Judge Bell recommended against intervention and appeal.

d) In 1963, Judge Bell wrote opinion for Fifth Circuit panel which affirmed district court desegregation plan for Atlanta schools.

e) Rule in Fifth Circuit is that a judge has a duty to sit on a case unless he is legally disqualified. Edwards v. United States, 5 Cir. 1964, 334 F. 2d 360, 362-63. This is also the rule in other circuits.

f) Title 28 U.S.C. §455, provides:

"Any justice or judge of the United States shall disqualify himself in any case in which he has a substantial interest, has been of counsel, is or has been a material witness, or is so related to or connected with any party or his attorney as to render it improper, in his opinion, for him to sit on the trial, appeal, or other proceeding therein."

g) Judge Bell was criticized for sitting on the appeal in the Atlanta school case because it was alleged that in 1960, as a lawyer for Governor Vandiver, he had given advice on whether an appeal should be taken in the case and had, therefore, been "of counsel" in the case. However, Judge Bell's advice was given to Governor Vandiver and the state, neither of whom were parties in the case. At that time, Governor Vandiver and the state were trying to decide whether to attempt to intervene in the case and seek an appeal. They had no control over the

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parties to the case and, thus, Judge Bell's advice was not even indirectly given to those parties.

Judge Bell's general views on disqualification, as expressed in his Order on Motion to Disqualify Judge Bell, Avman v. Nix, C.A. No. 16708, (N.D. Ga. September 21, 1973), which has been made a part of the record of the Hearings, are consistent with the rule of the Fifth Circuit and other circuits. Judge Bell believes that a judge has a duty to sit on a case unless he is legally disqualified. He said that although the burden of judging would be much less if disqualification were easily obtainable, judges have an obligation to decide difficult cases. An attempt to shirk this obligation will have the undesirable result of encouraging forum shopping.

2. Settlement of Case in 1973 - Judge Bell's Speech to Action Forum

a) October 1972--Bell addressed meeting of Action Forum in Atlanta.

b) Participants: 25 to 30 Black and white Atlanta leaders including the immediate past president of the Chamber of Commerce, the president of the Atlanta Chapter of the NAACP, the director of the Atlanta Urban League Office (who is also chairman of the district court's biracial committee in the Atlanta school case), one and perhaps two national directors of the Urban League, and a number of other outstanding black and white leaders of Atlanta. There were two defendant school board members present. One of the black leaders was a plaintiff in the Atlanta school case.

c) Judge Bell's speech:

1. General synopsis of school desegregation law, beginning with Brown v. Board and ending with Swann v. Charlotte-Mecklenberg.

2. Responsibility of school board members and school system to comply with the law as announced in Swann.

3. During the 15 years of litigation in the Atlanta school case the school population changed from 67% white in 1958 when Atlanta case was filed to 18% white in 1972, with loss of some 27,000 students from the system.

4. Pointed to Black and white leaders in other communities in the Fifth Circuit who had taken responsibility to bring about settlement of school cases in an effort to preserve public education. (Specifically mentioned Mel Leventhal, an NAACP Legal Defense Fund, Inc. attorney in Jackson, Mississippi, who had successfully negotiated settlement in a large number of Mississippi school cases.)

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5. Stated that Atlanta had fallen behind other southern cities in desegregating its schools. Stated that school desegregation was not something simply to be left to the lawyers but rather it is the responsibility of both the parties and the communities involved to get on with the business of desegregating the schools.

d) Several statements by participants in discussion after the speech. President of local chapter of NAACP, which included plaintiffs in Atlanta case, said his group had never been able to get school board to negotiate seriously about a settlement of the case. This was denied by one of the school board members who was present.

e) The co-chairmen of the Action Forum suggested that the plaintiffs and the school board should get together to talk about the possibility of finally agreeing on a desegregation plan for the Atlanta system.

f) Judge Bell did not participate in any of the subsequent negotiations which eventually resulted in a settlement of the case.

g) The settlement was approved by all the plaintiffs, by the district court and by the Fifth Circuit (Judge Bell was not a member of this Fifth Circuit panel).

h) The national direction of the NAACP disapproved of the settlement and this became the source of a major split between the local Atlanta chapter and the national organization.

3. Metro Case

In 1973, Judge Bell sat on three-judge panel in Armour v. Nix, Civ. # 16708 (N.D. Ga. 1972), a suit to consolidate the Atlanta school system with the school systems in the three adjoining counties. In that case, the plaintiff's counsel filed a motion to disqualify Judge Bell on the ground that his 1972 Action Forum speech constituted involvement in the Atlanta case and that such involvement would prejudice his consideration of the merits of the "metro" case. Judge Bell denied the motion citing Judge Merhige's refusal to disqualify himself in the Richmond metro case where Judge Merhige had been challenged on the basis of his prior suggestion to plaintiff's counsel in that case that the Richmond school system be consolidated with those of the two adjoining counties.

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Bradley v. School Board of Richmond, ED Va. 197., 324 F. Supp. 439. Judge Bell concluded that he was not disqualified under § 455 and that he did not hold any bias against any plaintiff or in favor of any defendant within the contemplation of § 144. There was no appeal from Judge Bell's denial of the disqualification motion.

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- D. Ross Barnett Contempt Case
United States v. Barnett, 330 F.2d 369 (1964), 346
F.2d (1965)

1. Summary of Case

- The factual and procedural history of this matter is extremely complicated, involving in excess of 25 opinions and orders of various panels of Fifth Circuit judges and the Fifth Circuit en banc between early 1962 and May 1965.
- Meredith had applied for admission to the University of Mississippi and the District Court declined to enter appropriate orders enforcing Meredith's right to be admitted and enjoining Mississippi officials from interfering.
- Bell stood with the majority of the Court in ordering admission and restraining Governor Barnett from interfering, and later holding Barnett in civil contempt of a federal court order.
- When criminal contempt proceedings were initiated against Barnett, Bell was appointed by Chief Judge Tuttle to work with Special Prosecutor Leon Jaworski and Barnett's attorneys in seeking to establish procedures and arrangements for trial of criminal contempt charges by the Fifth Circuit. Subsequently these charges were dismissed in a 4-3 opinion in which Bell was with the majority. Dismissal was based on substantial compliance by Barnett with court orders and doubt as to the ability of the court to conduct a fair trial. Tuttle, Brown, and Wisdom dissented.

2. Comments

- Jaworski (1/13, 50-54, 61-66, 78-80) says he had personal contact with Bell during the proceedings in this case and praises Bell's role. Jaworski notes that:
 - Bell was one of the judges who enjoined Barnett from interfering with Meredith's admission.
 - Bell was appointed by Tuttle to represent the Court in determining procedures for the contempt trial.
 - Bell was completely objective and fair-minded in the proceedings.
 - Two other Fifth Circuit judges dissented from the granting of injunctions and restraining orders, but not Bell.

Bell never waived in preventing Barnett from interfering.

- Rauh (1/13, 133-34, 147-50) accuses Bell of letting Barnett go free of criminal contempt; says Jaworski not an expert on civil rights. Rauh admits that he does not have any personal knowledge about the Barnett case and that he has only read the opinion dealing with dismissal of the criminal contempt charge. In questioning by Bayh he does not disagree that Bell supported Brown, Tuttle, and Wisdom in ordering admission of Meredith and restraining Barnett and other state officials from interfering.

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E. Julian Bond Case
Bond v. Floyd, 251 F. Supp. 333 (1966), ev. 385 U.S.
 116 (1966)

1. Summary of Case

- 3 Judge District Court case brought to enjoin Ga. House from excluding Bond from membership. Bond was denied seat after Committee hearing and vote by full house (184 to 12).
- Denial of seat based upon Bond's support for statement issued by SNCC (Bond was Communications Director) which voiced sympathy for those who were draft dodgers and Bond's support for those who burned draft cards.
- Bell wrote opinion, joined by Morgan, upholding right of legislature to exclude because he found no case to contrary, cases establishing precedence, plus history of separation of power theory. Thus the conclusion was supportable at law that exclusive jurisdiction for determining qualifications for members was vested in legislature. Also Bell held due process not violated either procedurally or substantively under rational basis test.
- Dissent by Tuttle was based on his view that legislature could only exclude for failure to meet express and specific qualifications set forth in Ga. Constitution; therefore, didn't need to reach 1st Amendment question.
- Supreme Ct. reversed, holding that First Amendment rights prevailed over power of legislature to exclude.

2. Concerns expressed by witnesses and Senators

- Mathias (1/11, 19-22) concerned about Bell's limitation of First Amendment rights.
- Clarence Mitchell (1/12, 241-2) no specifics, simply concerned about decision and Bell's ousting of Blacks for legislature.
- Rauh (1/13, 132-3) accuses Bell of yielding to hysteria and passions of moment in support of Vietnam War against Bond position.
- Bond (1/14, 115-18) concerned about Bell's failure to attach importance to First Amendment and thinks Bell still not aware of significance of First Amendment.

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- Bond (1/14, 150) does not think Bell motivated by racial prejudice in deciding case.

3. Response - Bell (1/11, 19-22)

- Bell admits error, points out that he was reversed 9-0, says Supreme Court decision makes it clear that First Amendment rights should prevail over any right legislature may have to determine qualifications for members.
- Case law at time arguable supported power of legislature to exclude; this was before Adam Calyton Powell case.
- Note that neither majority nor dissent placed sufficient emphasis on Amendment question upon which case was reversed by Supreme Court.
- This case was one balancing Const. First Amendment rights against legislative rights under Const. theory of separation of power. Subsequent Supreme Court cases have given First Amendment rights greater weight than was so at that time.
- Bell says he views First Amendment as having great importance and other leading cases written by him support that view.

4. Other Cases

- Machesky v. Bizzell, 414 F.2d 283 (1969)
 - Mississippi picketing case. Bell held that plaintiff entitled to federal injunction to enforce First Amendment rights.
- Brooks v. Auburn University, 412 F.2d 1171 (1969)
 - Bell held action of University President in refusing to allow William Sloan Coffin to speak on campus was prior restraint in violation of First Amendment.
- Georgia Conf. of Amer. Ass'n of Univ. Prof. v. Board of Regents, 246 F. Supp. 553 (1965)
 - Bell invalidated loyalty oath requirement as inconsistent with First Amendment rights.
- Southwire Co. v. NLRB, 383 F.2d 235 (1967)
 - Bell upheld First Amendment rights in context of Labor dispute.

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F. Jackson Swimming Pool Case
Palmer v. Thompson, 419 F. 2d 1222 (1970) en banc,
AFF'd 403 US 217 (1971)

1. Summary of Case

- Fifth Circuit, by 7-6 vote with Bell in majority, upheld decision allowing Jackson, Mississippi to close all public swimming pools, allegedly because they could not be operated safely or economically on integrated basis.
- Bell wrote special concurring opinion in which all others in majority joined. He noted a distinction between racial motivation involved in closing of pools and finding of racial discriminatory purpose. Bell said there must be a finding of discrimination, not simply the involvement of racial considerations. Bell found no proof of "racially discriminatory purpose" in this case.
- Supreme Court affirmed the closing of swimming pools in an opinion written by Justice Black.

2. Concerns of Witnesses and Senators

- Heinz (1/12, 61-64, 124, 249-53) concerned that while other courts and judges have found discrimination based on effect, Bell in this case would only find discrimination if intent to discriminate was proven
- Mitchell (1/12, 249-53) expresses same concerns as Heinz and also notes his criticism of recent Supreme Court opinion which requires intent to discriminate rather than just discriminatory effect.

3. Comments

- While decision does not represent the approach desired by civil rights activists in racial discrimination actions, it was consistent with the law at that time and is probably still the law today in light of Supreme Court decision in Arlington Heights v. Metropolitan Housing Corp., #75-616, January 11, 1977 where the Court held:

"Proof of racially discriminatory intent or purpose is required to show a violation of the Equal Protection Clause."

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- Bell's use of phrase "racial motivation" was perhaps unfortunate choice of words. He was trying to distinguish between a decision having racial considerations as a catalyst but being non-discriminatory in purpose and a decision the intent or purpose of which was to discriminate between or treat unequally persons of different races.
- Bell says that he will enforce the law and explains that while one cannot see intent, one can see a discriminatory result. Once the discriminatory result is found, then an investigation should be carried out to determine if purpose was to discriminate. Bell (1/12, 63)
- It should be noted that role of judge at appellate level is limited to evidence before court while Attorney General would be able to conduct investigations to determine if discriminatory intent were present.
- In other cases Bell has enforced rights of all citizens to equal access to governmental services:
- Hawkins v. Town of Shaw, 437 F. 2d 1286 (1971), 461 F 2d 1171 (1972) en banc

The panel opinion by Tuttle held that the provision of unequal municipal services to blacks was unconstitutionally discriminatory and found that although the record contained no evidence of discriminatory intent, "actual intent or motive need not be directly proved" under the Fourteenth Amendment. Judge Bell, in a special concurrence, stated that discriminatory effect was legally insufficient, that a racial discriminatory intent had to be shown, and that such an intent had been shown in the case.

In the en banc decision, the Fifth Circuit in a per curiam decision, with Bell concurring, held that the record evidenced both discriminatory effect and discriminatory intent.

- Mansell v. Saunders, 372 F. 2d 573 (1967)
- Bell upheld causes of action under §1983 (denial of equal protection and due process) against County Commissioners re setting up of garbage collection districts in discriminatory manner.

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- Lane v. Correll, 434 F. 2d 598 (1970)

Class action by indigents attacking Miami ordinance requiring fee for arrest warrants. Bell held that access to criminal process cannot be denied because of poverty.

G. GRIFFIN BELL'S RECORD ON CIVIL RIGHTS: SELECTED CASES*

Machesky v. Bizzell, 414 F.2d 283 (1969).

This is a First Amendment case involving a suit in the U.S. District Court to enjoin the state court from prohibiting picketing and boycotting by a civil rights group. The picketing sought to achieve equal employment opportunities, improved city services for Blacks, fair treatment by police and dialogue with elected officials. Judge Bell reversed the District Court's dismissal of the complaint holding that the anti-injunction statute must yield to protection of First Amendment rights and that the District Court was empowered to enjoin the state court proceedings.

Brooks v. Auburn University, 412 F.2d 1171 (1969).

Bell held action of University president in refusing to allow William Sloan Coffin to speak on campus was prior restraint in violation of the First Amendment.

Lane v. Correll, 434 F.2d 598 (1970).

Class action by indigents attacking Miami ordinance requiring fee for arrest warrants. Bell held that access to criminal process cannot be denied because of poverty.

Georgia Conference of AAUP v. Board of Regents, 246 F. Supp. 553 (1965).

Judge Bell for a three judge district court held invalid two Georgia statutes that required teachers in public schools and colleges take loyalty oaths: (1) that they would refrain from subscribing to or teaching any theory of government "inconsistent with the fundamental principles of patriotism and high ideals of Americanism", and (2) that they have "no sympathy for the doctrines of Communism".

Sims v. Fox, 505 F.2d 857 (1974).

A majority of the court in a 9-6 decision affirmed a district court decision that dismissed the complaint of a reserve Air Force officer who had been discharged from the Air Force without a hearing. The officer had pleaded nolo contendere to a charge of indecent exposure. Judge Bell joined Judge Tuttle's dissent that rejected the majority's ground that the officer had no "property right" in continued employment and maintained the officer was entitled to a due process hearing.

* School desegregation cases discussed elsewhere.

Dilworth v. Riner, 343 F.2d 226 (1965).

Judge Bell's opinion for the panel held that a district court had power under the Civil Rights Act of 1964 to issue a temporary restraining order enjoining the prosecution of Blacks in state court for breach of the peace resulting from peaceful attempts to assert a right to service in a restaurant covered by Title II of the Act.

Dean v. Ashling, 409 F.2d 754 (1969).

Bell (with Phillips and Morgan) ruled that a trailer park was within the "other establishments" provision of the public accommodations section in Title II of the Civil Rights Act. The district court had erred in dismissing the case on grounds that plaintiffs had failed to establish that there was space for rent at the time they were refused. Judge Bell's opinion correctly stated that:

"Plaintiffs needed to show no more than that the policy or practice of the parks was to deny Negroes and that they were in fact denied. The burden then should have been shifted to the trailer park operators to justify the denial." 409 F.2d at 756.

Gregory v. Meyer, 376 F.2d 509 (1967).

In reversing a district court, Judge Bell (with Brown and Brewster) held that a public restaurant which was three blocks from a federal highway and whose food was almost all shipped in interstate commerce was a place of public accommodations covered by Title II of the Civil Rights Act of 1964. This decision followed the Supreme Court rulings in Katzenbach v. McClung, 379 U.S. 294 (1964) and Heart of Atlanta Motel v. United States, 379 U.S. 241 (1964).

Walker v. State of Georgia, 405 F.2d 1191 (1969).

This case involved a removal petition of sit-in demonstrators. Reversing the district court's denial of the petition, Judge Bell (with Coleman and Morgan) held that since the sit-in activities were protected by Title II of the Civil Rights Act of 1964, a federal court hearing on the state motivation for arrest and prosecution was required.

Voting RightsUnited States v. Ward, 345 F.2d 857 (1965)

This was a Mississippi voting rights case in which Bell

reversed the district court judge and held that there was a pattern or practice of discrimination and that freezing of the registration standards was appropriate relief.

United States v. Lynd, 349 F.2d 785 (1965).

This was another Mississippi voting rights case where Bell reversed the district court and held that there was discrimination. This case also resulted in the contempt trial of the County Voting Registrar.

Sanders v. Gray, 203 F. Supp. 158 (1962).

This is the case in which Judge Bell wrote the majority opinion invalidating the Georgia county unit system. This case was appealed to the Supreme Court, 372 U.S. 368 (1962). The Supreme Court noted that:

"While we agree with the district court on most phases of the case and think it was right in enjoining the use of the county unit system in tabulating the votes, we vacate its judgment and remand the case so that a decree in conformity with our opinion may be entered." Supra, at 381.

Basically the Supreme Court differed with the Bell opinion as to the applicability of the electoral college system and analysis to Georgia's procedure.

Tombs v. Fortson, 205 F. Supp. 248 (1962).

This was the first of the Georgia legislative reapportionment cases and in this opinion written by Tuttle, the state was given an opportunity to reconstitute the legislature.

241 F. Supp. 65 (1965). This was a per curiam by Bell which accepted certain interim plans with conditions.

277 F. Supp. 821 (1967). This opinion was written by Bell and it ordered various specific changes in the proposed legislative reapportionment.

In these cases, Bell and Tuttle actually wrote many of the provisions which determined the legislative structure in Georgia.

Toney v. White, 488 F.2d 310 (en banc), modifying 476 F.2d 203 (5th Cir. 1973).

This was a racial discrimination challenge brought by

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defeated Black candidates seeking to upset an election alleging unconstitutional purging of the registration list. The district court granted relief, setting aside the election. On appeal, the panel affirmed the prospective relief but held the court below erred in upsetting the election. The ruling was that there either had to be gross, intentional racial discrimination or the suit had to be filed prior to the election.

Judge Bell wrote the en banc opinion holding that the election should be upset since plaintiffs could not be faulted for not bringing the suit prior to election. He agreed that if there was no rule requiring pre-election suit, parties would be encouraged to wait until after the election, and seeking to upset it, they would get two shots at the electorate. On the facts of the case, where the purge started only a month before the election, where private lawyers would have to be found and the facts investigated before suing, etc., the court found no waiver by plaintiffs.

TITLE VII, EEOC, Employment Discrimination

Overnite Transportation Company v. EEOC, 398 F.2d 368 (1968).

In this case, Bell enforced an order of the EEOC requiring compliance with its demand for access to evidence from the employer. This case represents the resolution of an important procedural question in favor of the EEOC.

Oatis v. Crown Zellerbach Corporation, 398 F.2d 496 (1968).

In this case the district court held that membership in a class action brought under Title VII was restricted to individuals who had filed charges with the EEOC. Bell reversed this decision ruling that it was not necessary that a member of the class bring a charge with the EEOC as a prerequisite to joining as co-plaintiffs in the litigation. This case is certainly one of the most significant of Bell's decisions in this area. It is important because of its clear recognition of the essentially class character of a Title VII complaint, of the importance of the class action as a mechanism for eliminating discrimination, and the interpretation of Title VII as not imposing upon laymen needless procedural barriers. It is also one of the first opinions to enunciate the application of the private attorney general theory to the private Title VII litigant.

Caldwell v. National Brewing Company, 443 F.2d 1044 (1971).
cert. denied.

In this case Bell held that plaintiff who had allegedly been discharged from employment because of his complaints regarding discriminatory employment practices based on race and Title VII and he was not required to exhaust administrative procedure before the EEOC before maintaining his actions. Cert was denied in this case.

Weeks v. Southern Bell Telephone and Telegraph Company, 359 F. Supp. 1219 (1971).

In this case Bell was sitting as a district court judge by designation and held that in a case in which the judgment was adverse to plaintiff on the trial level but was favorable to plaintiff on appeal, both trial and appellate counsel were entitled to reasonable awards for their fees.

Rios v. Reynolds Metals Company, 467 F.2d 54 (1972).

Rios sued his employer for discrimination because he was a Mexican-American. The district court held that the Title VII suit was barred because of prior arbitration proceedings. Bell held that while a federal court may under limited circumstances defer to a prior arbitration award, this must be done only under certain conditions which guarantee the rights of the plaintiff under the Act. This case might be said as supporting a philosophy of encouraging resort to alternative mechanisms which would timely resolve a dispute in accordance with the policy of Title VII without litigation.

Duhon v. Goodyear Tire & Rubber Company, 494 F.2d 817 (1974).

Judge Bell (with Tuttle and Goldberg) vacated and remanded a district court's denial of any relief beyond enjoining the use of discriminatory written tests. Bell required an injunction against the employer's use of discriminatory education requirements, held that some form of back pay and seniority revision was necessary, and held that plaintiffs were entitled to attorneys fees.

Petterway v. Veterans Administration Hospital, Houston, Texas, 495 F.2d 1223 (1974).

In this case an employee of the Veterans Administration sued for alleged officially discriminatory employment practices. The district court dismissed based on sovereign immunity. Bell held that although some claims were barred by sovereign immu-

ity, the district court should have considered whether the alleged racial discrimination was ultra vires to statutory and constitutional authority and whether or not the relief sought was within an exception to sovereign immunity. This was a narrow construction of the doctrine of sovereign immunity to allow possible recovery by plaintiff.

Wade v. Mississippi Cooperative Extension Service, 528 F.2d 508 (1976).

Bell's opinion found discriminatory practices by the Mississippi Cooperative Extension Service and granted broad relief to Black employees and patrons of Cooperative.

Jury Selection

Cobb v. Balkcom, 339 F.2d 95 (1964).

Bell held that Negroes had been systematically excluded from the grand and petit juries and this amounted to denial of due process and equal protection of laws guaranteed by the Fourteenth Amendment.

Preston v. Mandeville, 428 F.2d 1392 (1970).

Judge Bell significantly advanced the right to trial by jury. In this case, Judge Bell wrote the opinion which reversed the dismissal of an action by Blacks seeking to serve on juries in Mobile County, Alabama. The plaintiffs had shown a thirteen percent disparity between the jury list and the population, but their proof had been by scientific sampling of the eighteen thousand name jury list. Bell held that this method of proof was sufficient, and that plaintiffs had proved a prima facie case of racial discrimination.

This case broke new ground in that, for the first time, a federal court approved the use of scientific sampling to demonstrate the make-up of the entire list.

Prisoners' Rights

United States v. McCullough, 405 F.2d 722 (1969).

The issue was whether several maximum sentences running concurrently were to be treated as a maximum sentence for the purpose of crediting a prisoner with time spent in jail prior to sentencing under 18 U.S.C. § 3568. (The practice at the time was that a prisoner was not entitled to jailtime credit unless he has received the maximum sentence provided by law.)

The government had contended that the prisoners were not entitled to the credit for time spent in jail prior to sentence because, although they had received the maximum sentence on each of their convictions, the several sentences of each prisoner were imposed to run concurrently with each other, rather than consecutively. Therefore, the government took the position that the prisoners had not received the maximum sentence because the sentencing judge could have imposed the sentences to be served consecutively.

In a case of first impression in the Fifth Circuit, Bell rejected this view, holding that the prisoner had received the maximum sentence on each count and therefore had received the maximum sentence.

Taylor v. Blackwell, 418 F.2d 199 (1969).

In this case, a prisoner filed a pro se complaint alleging that his good time had been forfeited illegally. The district court dismissed the action without requiring defendants to show cause. Bell reversed the district court's dismissal on the ground that the allegations in the complaint "were such as to at least require an order to show cause." 418 F.2d at 200. Bell stated that the district court should make its determination "in light of the standard which is applicable to prisoner discipline cases, i.e., whether there existed arbitrariness or an abuse of discretion on the part of prison officials in their decision . . . ordering forfeiture of petitioner's good time." 418 F.2d at 200-201 [citation omitted].

Thompson v. United States, 492 F.2d 1082 (1974).

Here, a prisoner had brought an action to recover back compensation for injuries sustained during the course of his employment in federal prison industries. The district court granted the government's motion to dismiss.

Bell reversed, holding that a regulation barring the processing of claims for accident compensation until 30 days prior to the disabled prisoner's release did not bar the prisoner from obtaining partial compensation. Bell characterized the regulation as arbitrary and capricious. He also construed the prisoner's complaint more liberally than the district court since the district court never reached the question of partial compensation.

IV. VANDIVER YEARS

A. BASIS FOR OPPOSITION: During the course of the Judiciary Committee hearings, repeated attention has been given to Judge Bell's role during the term of office of former Georgia Governor Ernest Vandiver. Several witnesses (principally Mr. Mitchell (1/12, 166 et seq.), Mr. Rauh (1/13, 93 et seq.), and Mr. Henry (1/19, 3 et seq.)) attempted to characterize Judge Bell as leading, aiding, and comforting a course of massive resistance to school integration in Georgia. Their source materials have included selected newspaper articles from those years (e.g., 1/12, 34; 1/11, 139); copies of certain legislation which was passed by the Georgia legislature in January, 1959 (e.g., 1/11, 141); a copy of what is commonly called the Sibley Commission report; and the public statements and rhetoric of Governor Vandiver as reported in the press and the legislative journals of that period. Their selected historical vision of these isolated scrapbook items is myopic.

Those who were present at that time were in the best position to evaluate the significance of Judge Bell's role in counseling moderation and a rule of law. Many such witnesses came forward to testify before the Judiciary Committee; others have given the media statements of the facts based on their direct knowledge; and Judge Bell testified at length before the Committee on the events of these years.

B. CHIEF OF STAFF: From the time of Vandiver's inauguration as Governor in January, 1959, until Bell's appointment to the Fifth Circuit Court of Appeals by President Kennedy on October 3, 1961, Bell held the title of Chief of Staff. There is no dispute as to the title's meaning: the position was an honorary one (Bell, 1/12, 60); Bell received no compensation for the job during the entire period; throughout the time he was working as a lawyer or special counsel to Governor Vandiver, Bell was a fulltime managing partner of King & Spalding; Bell saw his own role as that of a lawyer; later, Bell was also serving as Senator John F. Kennedy's Georgia campaign manager in his presidential campaign.

C. MASSIVE RESISTANCE: In the wake of Brown v. Board of Education, some states rushed to adopt programs of massive resistance to integration. In Virginia, the Prince Edward County public school system closed rather than yield to court-ordered integration. In other areas, violence erupted in these immediate post-Brown years to thwart integration orders, as in the case of Autherine Lucy's attempt to enter The University of Alabama in 1955, at Texarkana Junior College in Texas in 1956, and in Little Rock in 1957.

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Vandiver's predecessor, Marvin Griffin, was an outspoken segregationist and his administration, among other things, in 1956 enacted legislation that would require the cut off of state funds to all schools in any school system that integrated. (Talmadge, 1/11, 3).

D. ERNEST VANDIVER: During his 1958 campaign for Governor, then Lt. Gov. Vandiver expressly pledged to close the state's public school system rather than integrate the races under court order. Most of the members elected to the General Assembly had made similar pledges. The force of Vandiver's rhetoric was captured in the shorthand "No--not one." (McKinney, 1/13, 30). Vandiver won the Democratic primary in September, 1958 -- an event tantamount to ultimate victory in this one party state governed by a county unit system that completely muted any urban voice in statewide elections.*

E. COOPER V. AARON - THE LITTLE ROCK CASE: Cooper v. Aaron, 358 U.S. 1 (1958), was argued September 11, 1958, decided September 12, and the opinion was announced September 29. Cooper was the first pronouncement by the Supreme Court in a school desegregation matter since its decision in Brown II, and the Court made it clear that violence or the threat of violence was no excuse for noncompliance with the rule of Brown. The message of this decision to the South -- and to the campaign pledges of Ernest Vandiver -- were unmistakable. (Bell, 1/12, 41).

F. GRIFFIN BELL'S ROLE: In December, 1958 Griffin Bell was a 39-year old lawyer in the Atlanta law firm of King & Spalding. He had had no role in the Vandiver election campaign. Bell had previously acted as Vandiver's lawyer in several private legal matters. After Cooper v. Aaron, Vandiver asked Bell to work with some other lawyers to review what other Southern states were doing in light of the Supreme Court mandate. (Bell, 1/11, 34). Vandiver also put on this legal team Carter Pittman, Charles Bloch, and Buck Murphy. Bloch and Pittman had previously represented school boards and Bloch and Murphy had been legal advisors to former Governor Griffin and had led the state's legal attacks on the integration mandates. It was Bell's first professional exposure to the integration question. (Bell, 1/12, 60; cf. 1/17, 29-30).

*Judge Bell later wrote the opinion declaring the Georgia county unit system unconstitutional. Sanders v. Gray, 203 F. Supp. 158 (1962).

Vandiver was inaugurated on January 12, 1959. Certain legislation was proposed by Vandiver, introduced in the legislature by Carl E. Sanders (later Governor), and promptly enacted by the General Assembly. This legislation has been the subject of considerable discussion in the Judiciary Committee hearings. It included such measures as an act to permit the Governor to close individual schools to avoid violence or disorder resulting from integration (prior law required whole districts to be closed); an act to allow the Governor to close any unit of the University system to avoid violence or public disorder (prior law required system wide closing); an act to provide tax authority for separate schools (though the act allowed taxing authority to continue to support individual separate schools even if some schools remained closed). Judge Bell acknowledged in his testimony that the legal committee had conceived in part the concepts of the January, 1959, legislation, though he noted that this legislation represented some moderation from the prior law. (Bell, 1/11, 35, 83; 1/12, 36-38).

G. BI-RACIAL MEETINGS: This legislation was not the total picture of Bell's activities. (Bell, 1/17, 4). Even prior to Governor Vandiver's inauguration, Bell was having conferences and meetings with the Black leadership of Georgia. These meetings have been called by some of the Black leaders the first bi-racial meetings of any kind in Georgia. (1/17, 36). One of the principal participants in these meetings, Warren Cochran, executive director of the Atlanta Negro Voters' League, testified as follows about these meetings:

"When Vandiver was elected.... there was nothing but total segregation and massive resistance to everything. Judge Bell's position in this matter was very simple. He was appointed. He worked as a young lawyer. He was in his late 30's at the time. He worked at King and Spalding, one of the most illustrious law offices in Atlanta.... He kept us informed every step of the way what was happening in the Vandiver situation.... Ernest Vandiver was a great disappointment to us when he came out with the stand he took, but he was a politician. The only way you could get elected in Georgia in those days was to form massive resistance.... We were asked by Judge Bell, and he said I am doing this voluntarily because we want you to know what is happening. 'I am trying to convince Ernest Vandiver to change his position.'" (See also Bell, 1/17, 8-10).

A number of others who participated in those events have also come forward to state their view of Bell's moderating influence. Atlanta reporter Sam Hopkins published a news article in The Atlanta Constitution on December 24, 1976, with interviews of many of these persons about these times. These participants outlined the significance of the events and these bi-racial meetings. Another reporter, Nancy Lewis, of the Cox Enterprises Washington Bureau, published a news article last week detailing some of the viewpoints of other participants who praised Griffin Bell's role in those bi-racial meetings. The Atlanta Constitution, Jan. 18, 1977, p. 2. Both Hopkins' and Lewis' articles are contained in the record of the hearings. (1/12, 32; Bell, 1/17, 35).

H. THE SIBLEY COMMISSION: It was in the temper of the prodigious public pressures not to integrate and the Governor's and General Assembly's election pledges not to integrate that Bell conceived the idea of a Commission to hold public hearings around Georgia to assess the public will. Bell believed that the people would speak out for the public schools and that the politicians would yield to an expression of public opposition to the closing of the public schools. The Commission was enacted in February, 1960 in a bill introduced in the legislature by the present Georgia Governor, George Busbee. Bell persuaded a former King & Spalding law partner and then Trust Company bank president John Sibley, an unassailable leader in the Atlanta establishment, to be the chairman of the Commission. (Bell, 1/12, 111). Sibley and his Commission held hearings throughout Georgia and heard some 1,800 witnesses. Bell had no position on the Commission itself and had no say in the Commission's ultimate recommendations which were released on April 28, 1960. (Bell, 1/12, 111-114, 158).

As a group, the Commission was closely divided (11-8), as a vigorous minority of its membership urged that the white citizens should not yield to integration. (1/13, 122). The salient position of the majority was its conclusion that the Georgia public school system must remain open. (1/17, 5).

The recommendations still contained much of the political rhetoric of the day (and thus was acceptable to the legislature), but its impact and effect were unmistakable. For example, when the University of Georgia was integrated the following January as Vernon Jordan led Hamilton Holmes and Charlayne Hunter through its then "white only" doors, Vandiver retreated from his campaign pledge. (Bell, 1/11, 37-38; 1/12, 159). The significance of these events and the role of people like Griffin Bell who effectively counseled moderation and the rule of law at this potentially explosive time cannot be underestimated. (McKinney, 1/13, 311, 325; Bell, 1/11, 115).

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Though Vandiver's election came several years after Brown v. Board of Education, the civil rights gains associated with the sixties were still distant realities. The Student Nonviolent Coordinating Committee did not hold their organizational meetings in Greensboro, N.C. until the Spring of 1960. The massive sit-ins of the early sixties were yet to occur. The violence that erupted in Oxford, Mississippi in 1962 when James Meredith attempted to integrate Ole Miss had not happened. Still to come in 1963 was Governor Wallace's stance in the University of Alabama door. Selma, the Birmingham riots, that city's church bombing, the murder of Medger Evers, the legal breakthroughs in voting rights and fair jury representation, and much more were still a long way off. Georgia chose an early peaceful course that could have taken different turns but for the positive and effective role of people like Griffin Bell.

One cannot overlook the views of respected voices who were there and involved in those days.

One such person was Eugene Patterson. He was then Editor of The Atlanta Constitution; Ralph McGill was then the paper's publisher. Patterson won a Pulitzer Prize later for his editorials and was to serve as vice chairman of the United States Commission on Civil Rights. He left Atlanta in 1968 to become Managing Editor of the Washington Post, and presently publishes the respected St. Petersburg Times. He wrote recently an article which is in the hearing record:

"But the pace of the march was less important than the direction the few leaders took in that time when too many politicians and judges were clinging to the safe popularity of the past. To go back from the present and glean isolated errors from the past of such men is to lose sight of their true measure; the sustained thrust of their courage and commitment in a time when it took courage to have courage. Bell qualified...

When the dust settles, Bell is likely to be seen for what he is -- an able and incorruptible lawyer of the highest character and integrity and a principled man, who on the balance of his actions over the last two decades, can be depended upon to demand that civil rights law be obeyed."

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Georgia's Senators Nunn and Talmadge were both observers and participants of those times and testified to the Committee about Bell's important contributions in the Vandiver years. (1/12, 3-4; 7-9).

Others from Georgia have come forward to testify before the Senate Judiciary Committee on the significance of Bell's role; e.g. Warren Cochran (1/13, 196); Billy McKinney, (1/13, 309).

Certain others who were also in the arena have been quoted to the same effect in various press accounts: e.g., Vernon Jordan, Chuch Morgan, Howard Moore, Hon. Andrew Young, Ralph Abernathy, Bobby Hill. Leon Jaworski testified to having reviewed Judge Bell's qualifications in 1961 on behalf of the ABA with persons like then Chief Judge Elbert Tuttle (1/13; 1/11, 85).

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V. MEMBERSHIP IN PRIVATE CLUBS

- A. RESIGNATION FROM PRIVATE CLUBS: Effective January 18, 1977, Judge Bell resigned his memberships in private clubs (1/17, 22; Bell letter 1/18). In his view, the Attorney General is symbolic of equal justice under law and, consequently, he felt a special obligation to resign. (Senator Robert Kennedy also resigned from a private club after becoming Attorney General) (1/12, 100)

Judge Bell testified that he helped to integrate the Lawyers' Club of Atlanta because he "thought the Lawyers' Club was vested with the public interest." Because he "thought it was wrong for the Lawyers' Club not to be integrated," he did not attend a meeting for three years until the club was integrated. He encouraged the proposal of the first Black member of the club. (1/12, 101)

Judge Bell stated that he does not know whether he would rejoin a private club after serving as Attorney General. (1/12, 103) He noted that he had witnessed the integration of a number of previously segregated organizations (e.g., his church, State and Atlanta Bar Associations, Atlanta Lawyers' Club) and he expressed his hope that the private clubs to which he belonged might also be integrated by the time he leaves office. (1/12, 101, 103)

- B. BISCAYNE BAY YACHT CLUB: THE QUESTION OF RECUSAL: The issue in the Biscayne Bay case (Gordon v. Biscayne Bay Yacht Club, 530 F. 2d 16, 1976, en banc, 5th Circuit) was whether the club had lost its status as a private club on a "state action" theory because it was allowed to lease public bottom land at a token fee for maintenance of boat dock facilities. (1/12, 130-131) The clubs to which Judge Bell belonged did not have any similar connection with any state or local government and, therefore, would not have been affected by the outcome of the Biscayne Bay case as held by the Supreme Court in the Moose Club decision. There was thus no legal reason for Judge Bell to disqualify himself. (1/12, 131, 17/40-41) Judge Bell acknowledged that he would have recused himself if the suit had challenged private clubs per se. But the state action issue in the Biscayne Bay action was unique to that case (1/12, 131) and the special situation of that club.

- C. MEMBERSHIP AS A FEDERAL JUDGE: It was the practice in many communities in the Fifth Circuit for federal judges, as well as others such as clergymen and governors, to be given honorary memberships in private clubs. Almost all judges of the Fifth Circuit belonged to such clubs. The question of membership in private clubs was debated by the Fifth Circuit at a meeting of the judges and it was decided that it would be appropriate for judges to continue such memberships. (1/12, 103) Both the Judicial Conference's rules (as interpreted by an Advisory Committee Ruling No. 47, Oct. 14, 1975) and ABA Canon 5C(4)(c) permit judges to accept honorary memberships in private clubs.
- D. REPORTING OF HONORARY MEMBERSHIPS: A question was raised as to whether Judge Bell violated the Code of Ethics of the ABA, as adopted by the Judicial Conference in April 1973, by failing to report his honorary club memberships (as gifts in excess of \$100) on his semi-annual extra-judicial income statement.

While ABA Canon No. 5C(4)(c) states that a judge should report all gifts in excess of \$100, it was not clear until an opinion was issued by the Advisory Committee of the Judicial Conference in October 1975 that an honorary membership was a "gift" that should be reported. (Advisory Opinion No. 47) It is clear from the record that Judge Bell was not aware of any requirement to report honorary memberships before the Advisory opinion was issued and it is unclear whether Judge Bell was aware of the Advisory Opinion before he filed his last report. (1/17, 86-88) Judge Bell was required to file only one such report between the issuance of Advisory Opinion No.47 and his resignation from the bench on March 1, 1976. In this report, filed shortly before he left the court, private club honorary memberships were not mentioned. (1/17, 86)

Judge Bell had voluntarily filed his reports of extra-judicial income for approximately ten years since the procedure had been recommended. He has submitted copies of all of his reports to the Judiciary Committee.

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VI. **CARSWELL SUPPORT:** The principal concern raised by members of the Judiciary Committee and adverse witnesses over Judge Bell's support of G. Harold Carswell at the time of his nomination by President Nixon for the Supreme Court was that this action may be indicative of the standards Judge Bell would apply in recommending candidates to President Carter for appointments as federal judges.

1. Judge Bell explained that writing a letter for a long-time friend who had already been designated as a nominee by the President was quite different from conducting the initial screening of candidates for the President's nomination and that he would conduct such screening by means of a rigorous merit selection process.

2. Judge Bell stated (a) that he is a strong supporter of merit selection of federal judges; (b) that he strongly urged President Carter to adopt a system of merit selection for federal judges; and (c) that he has been closely involved in drafting the executive order which will create the first merit selection commission for federal judges.

3. Judge Bell pointed out that Carswell had been a friend and law school classmate; that Carswell had asked Judge Bell to write letters of recommendation when Carswell was proposed for the district court and when he was named to the Fifth Circuit. Judge Bell viewed another request for a recommendation as natural when Carswell was proposed for the Supreme Court.

4. Judge Bell did feel that Carswell could contribute to the Court as a result of his experience as a U.S. Attorney and as a trial judge, experience which no other member of the Court had.

5. Carswell was a colleague on the Fifth Circuit and there was a certain parochial pride in what Judge Bell described as "one of our own" going to the Court. (1/11, 55) Many other Circuit and District Judges in the Fifth Circuit were supporting Carswell at the time and had similarly manifested their support. (1/11, 27, 55)

6. Judge Bell also noted that he felt it incumbent on himself to write a letter of recommendation as a demonstration of friendship for Carswell because there had been press reports that Bell himself had been considered for the nomination.

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7. Regarding his statement at the press conference on December 26, 1976, (when Carter announced Bell's designation as Attorney General) that he had written his letter of support for Carswell before he knew of the racist speech made by Carswell in a 1948 campaign, Judge Bell simply stated that he was in error. The letter had been written some six years earlier. The press questioning at the announcement had simply "caught him cold" on the facts of the Carswell sequence six years ago. After the conference, Judge Bell reviewed the facts and issued a statement to the press the next day, December 21, correcting the error.

8. Finally, Judge Bell refused to "repudiate" an old friend who had already suffered much personal tragedy.

AMERICAN CIVIL LIBERTIES UNION

Washington Office

January 17, 1977

Members of the Committee
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Senator:

In an effort to assist the Senate Committee on the Judiciary in its deliberations on the nomination of Griffin Bell as Attorney General, the American Civil Liberties Union has carefully reviewed and analyzed opinions pertaining to civil liberties and civil rights written by Mr. Bell during the fourteen and a half years during which he was a Judge of the United States Court of Appeals for the Fifth Circuit.

Our report is the attached document: A Review and Analysis of Griffin Bell's Judicial Opinions on Civil Liberties and Civil Rights. Given the difficulty of summarizing a judge's work product over a long period, we have not provided an overall summary of Mr. Bell's record, but we have provided short summaries at the outset of each section of the report.

Neither this letter nor the attached report may be considered as formal ACLU opposition to or support for the nomination of Griffin Bell. The ACLU, pursuant to Policy #521 adopted by the ACLU Board of Directors, is a non-partisan organization which "does not endorse or oppose candidates for elective or appointive office."

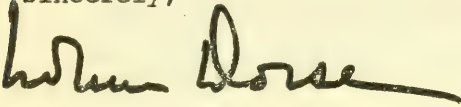
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-2-

But because of our dedication to and concern for civil liberties and civil rights, and because of the questions which have been raised about this aspect of Griffin Bell's record, we believe that the attached report may be useful in your deliberations.

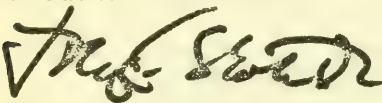
Sincerely,



Norman Dorsen
Chairperson of the Board



Aryeh Neier
Executive Director



John H.F. Shattuck
Director, Washington Office

Enc.

ACLU REPORTS

REPORT ON GRIFFIN BELL

A REVIEW AND ANALYSIS OF

GRIFFIN BELL'S

JUDICIAL OPINIONS

ON CIVIL LIBERTIES AND CIVIL RIGHTS

January 17, 1977

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REPORT ON GRIFFIN BELL
A REVIEW AND ANALYSIS OF
GRIFFIN BELL'S
JUDICIAL OPINIONS
ON CIVIL LIBERTIES AND CIVIL RIGHTS

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The American Civil Liberties Union is a nonpartisan organization which does not endorse or oppose candidates for elective or appointive office. But because of our dedication to and support for civil liberties and civil rights, and because of the questions which have been raised about this aspect of Griffin Bell's record, the ACLU has prepared this report to assist the Senate Committee on the Judiciary in its deliberations on the nomination of Griffin Bell as Attorney General.

SCHOOL DESEGREGATION

Griffin Bell's decisions on school desegregation cannot be viewed in isolation; rather, they must be viewed in the social, political and legal contexts of the fourteen and a half years during which Judge Bell sat on the Fifth Circuit.

Until the Supreme Court in Brown v. Board of Education, 347 U.S. 483 (1954), held state-required school segregation to be unconstitutional, segregation in schools and many other walks of life pervaded nearly every institution in the South. As federal pressure to desegregate increased in the late 50's and early 60's, the Southern states engaged in an extensive campaign of Massive Resistance. Because of the conflict between federal pressure and Massive Resistance, this was not an easy period for blacks or whites in the South.

Against this background of Massive Resistance, the Supreme Court became increasingly impatient with the lack of desegregation progress in the South. It was required again and again to require compliance with its desegregation mandates, which were ultimately traceable to the vagueness of its own "due deliberate speed" stand in Brown II. It was in 1954 in Brown I, 347 U.S. at 495, that the Supreme Court held

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that, "Separate educational facilities are inherently unequal." In Brown II, 349 U.S. 294, 300-301 (1955), the Court ordered that desegregation must proceed with "all deliberate speed" and mandated that the implementation of "these constitutional principles cannot be allowed to yield simply because of disagreement with them." Several years later in the Little Rock case, Cooper v. Aaron, 358 U.S. 1, 16 (1958), the Court reiterated that, "the constitutional rights of [black children] are not to be sacrificed or yielded" because of opposition to those rights. Yet compliance was not in evidence. In Goss v. Board of Education, 373 U.S. 683 (1963) the Court rejected voluntary transfer plans pursuant to which students were allowed to transfer out of desegregated schools. In McNeese v. Board of Education, 377 U.S. 668 (1963), the Court rejected another delaying tactic: lower court orders requiring exhaustion of administrative remedies. In Griffin v. County School Board of Prince Edward County, 377 U.S. 218, 234 (1964) the Court declared: "The time for mere 'deliberate speed' has run out." In Rogers v. Paul, 382 U.S. 198 (1965), the Court rejected as insufficient the use of one grade per year desegregation plans. Rejecting the use of freedom-of-choice plans in Green v. County School Board of New Kent County, 391 U.S. 430, 464 (1968), the Court ordered the elimination of segregation "root and branch" and emphasized: "The burden of a school board today is to come forward with a plan that promises realistically to work, and promises realistically to

work now." Rejecting other delaying tactics in Alexander v. Holmes County Board of Education, 396 U.S. 19, 20 (1969), the Court ordered the eradication of segregation "at once." And again, in Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 25 (1971), the Court reiterated that a desegregation plan was "to be judged by its effectiveness."

In the context of this background, Griffin Bell's desegregation decisions on balance did not advance civil rights. He sometimes ruled on procedural grounds and did not reach the merits in cases governed by other desegregation decisions. Where previous rulings controlled, he limited their effect. By filing special concurring opinions, he recorded his opposition to the breadth of relief granted by some other Fifth Circuit judges. And his dissents frequently served to indicate his opposition to federal intervention in some school segregation issues.

A review of Bell's school desegregation opinions follows:

In Potts v. Flax, 313 F.2d 284 (5th Cir. 1963), the sole issue on appeal was whether the named plaintiffs had established that they represented a class (so that a desegregation order obtained by way of relief could not be confined to the admission of the children of named plaintiffs to white schools). The Fifth Circuit held that the case was a proper class action and that relief must be granted to the class. Bell voted with the majority, but also filed a separate opinion, concurring in part and dissenting in part, in which he urged the adoption of a later

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date upon which the thirty day period following the final order would begin to run. The majority opinion does not reflect that anyone else perceived this as an issue.

In Calhoun v. Latimer, 321 F.2d 302 (5th Cir. 1963), on review of a motion for further relief in a school desegregation case, plaintiffs-appellants challenged the Atlanta school system's existing plan, which, after two years, provided only for voluntary transfers of 11th and 12th grade black students to white schools, and then only if they passed a personality interview and established on the basis of their past records that they would be capable of meeting the average performance level of the white school to which they wished to transfer. Appellants also raised questions about faculty integration.

Writing for the majority, Bell affirmed the Atlanta plan. After a review of other desegregation plans, Bell stated that the Atlanta plan was an unusual departure from the "almost universal" method of integrating schools. Bell said that while, "Nothing then could stay the inexorable hand of the Constitution in this regard. . . Gradualism in desegregation, if not the usual, is at least an accepted mode with emphasis on getting the job done." 321 F.2d at 308. Bell also stated:

"We hold that there is insufficient evidence on which to base a determination that the start made in Atlanta schools is not reasonable, or that the plan is not proceeding toward the goal at deliberate speed."
321 F.2d at 310.

* * *

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"It is clear that no student has complained to the court." 321 F.2d at 311.

* * *

"[W]hether to effect a plan, to speed it up, or to otherwise modify it is in the first instance for the school board." 321 F.2d at 311.

Bell explicitly declined to consider the faculty integration issue.

Bell's majority opinion caused Rives to dissent.

He stated that though nine years had passed since

Brown: "The essential fact, disclosed by the record before us, is that the schools of the City of Atlanta do not have a single grade. . . in which Negro children are permitted to become students on the same basis as are white children." 321 F.2d at 312.

In Evers v. Jackson Municipal Separate School District, 328 F.2d 408 (1964), Bell held the Mississippi compulsory school segregation law unconstitutional. Bell's opinion compared Mississippi with those states which had dropped compulsory segregation laws and which had voluntary transfer plans. He noted that the Mississippi law prohibiting pupil integration defeated a defense that named plaintiffs, by not having applied for transfers, had not exhausted available state remedies. The implication was that repeal of compulsory school segregation, coupled with a plan which permitted voluntary assignment, would satisfy the Fourteenth Amendment. Bell stated:

"This is not to say that the Fourteenth Amendment commands integration of the races in the schools, or that voluntary segregation is not legally permissible. The Supreme Court did not hold otherwise in Brown. Its

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holding was that enforced racial segregation in the public schools is a denial of the equal protection of the laws enjoined by the Fourteenth Amendment." 328 F.2d at 410 [citations omitted].

"But, there cannot be voluntary segregation in these schools where desegregation has been requested until inhibitions, legal and otherwise, serving to enforce segregation have been removed to the extent, as we said in Gibson, that appellants and the class they represent are 'afforded a reasonable and conscious opportunity to apply for admission to any schools for which they are eligible without regard to their race or color.'" 328 F.2d at 411 [citation omitted].

Bell also commented that all relief was discretionary in the district courts and noted that the proper course for federal appellate courts was to remand, perhaps with instructions, rather than to entertain prayers for remedial action.

In Davis v. Board of School Commissioners of Mobile Co., 322 F.2d 356 (5th Cir. 1963), the Fifth Circuit in a per curiam opinion, Bell dissenting, reversed a district court order which denied both immediate integration and an injunction against the operation of a segregated school system, and which instead set trial on a desegregation plan a year hence. The Fifth Circuit held that the injunction should have been issued by the district court, and that such an injunction now would be issued by the appeals court under the all writs statute, 28 U.S.C. §1651.

In dissenting, Bell indicated his support of the district court's opinion and noted that too little time remained before the opening of school to formulate a desegregation plan for that

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year.

In Harris v. Gibson, 322 F.2d 780 (5th Cir. 1963), Bell wrote a majority opinion relieving a school board from an injunction which prevented it from proceeding with a voluntary integration/pupil transfer plan. In Stell v. Savannah-Chatham County Board of Education, 333 F.2d 55 (5th Cir. 1964), Bell denied an injunction sought by black parents to terminate a dual school system immediately, and he denied an injunction by white parents seeking to stop a school board from proceeding with voluntary integration.

In Lockett v. Board of Education of Muscogee Co. School District, Ga., 342 F.2d 225 (5th Cir. 1965), where the school board had adopted a voluntary grade-a-year desegregation plan only several months before the suit, Bell writing for the panel observed that the Fifth Circuit two years earlier had disapproved grade-a-year plans. The plan thus was held unacceptable and the case was remanded to the district court for a new plan. On the question of assignments of black teachers and administrative personnel, Bell declined to rule, observing that he was "willing to rely on the integrity and good faith of the members of the school board." 342 F.2d at 229.

In a companion case, Bivins v. Board of Public Education & Orph. for Bibb Co., Ga., 342 F.2d 229 (1965), the school board admittedly maintained a dual system, but put forth as an alternative to a grade-a-year plan one by which in some years two grades would be desegregated. Bell reversed the district court's

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approval of the plan because it was contrary to an earlier Fifth Circuit decision mandating swifter desegregation. Bell declined to rule on the teacher assignment question, again citing a willingness to rely on the integrity and good faith of the school board.

Subsequent to the Supreme Court's rejection of freedom-of-choice plans in Green, the Fifth Circuit in a per curiam opinion in United States v. Board of Education of the City of Bessemer, 417 F.2d 846 (5th Cir. 1969), similarly rejected such voluntary plans. Bell, in a special concurring opinion, criticized the federal courts for "constantly escalating" the requirements of desegregation planning. "The specter of escalation, with no end in sight, retards the disestablishment process." 417 F.2d at 848.

In a similar case, United States v. Jefferson County Board of Education, 417 F.2d 834 (5th Cir. 1969), Bell's opinion cited to Green. But rather than concluding that freedom of choice was unacceptable, Bell stated that such plans would be unacceptable only if other methods were reasonably available and promised speedier and more effective conversion to a unitary school system. In other words, Bell also continued to support the use of a voluntary majority to minority transfer option (which permitted students to transfer from schools in which they were a racial majority to schools in which they were a minority).

In United States v. Hinds County School Board, 423 F.2d 1264 (5th Cir. 1969), the court with Judge Bell concurring reversed a district decision approving continued use by school districts of a freedom of choice plan and held that to effectuate converting several school systems to a unitary system, permanent plans should be prepared in conjunction with HEW officials.

In Mannings v. Board of Public Instruction of Hillsborough Co., 427 F.2d 874 (5th Cir. 1970), where 60% of the black students attended predominantly black schools, appellants had sought a system-wide plan that would eliminate all-black and all-white schools. Bell upheld a zoning or neighborhood assignment pattern that would have left 51% of the black students in predominantly black schools. He suggested that a majority-to-minority transfer plan would provide further balancing.

In Ellis v. Board of Public Instruction of Orange Co. Florida, 423 F.2d 203 (5th Cir. 1970), Bell permitted a neighborhood school plan to remedy a dual system (and rejected the need for a system-wide plan), provided that the neighborhood plan was adhered to without variance and accompanied by a majority-to-minority transfer option.

In Wright v. Board of Public Instruction of Alachua Co. Florida, 431 F.2d 1200 (5th Cir. 1970), the issue was whether the school board could close a black elementary and a black high school, reopening them as "pupil development centers" to

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which pupils would be voluntarily assigned. Plaintiffs-appellants contended that, given voluntary assignment, the plan would allow the board to continue operating the schools as black.

Generally consistent with the plaintiffs' position, Bell found that while there may have been a reason to justify closing the schools, the voluntary assignment plan could not be approved. Bell directed the district court to require that all assignments to these schools be on objective and non-racial standards.

A second question concerned the board's plan to combine enrollments of two predominantly black schools with low white enrollments, in order to achieve desegregation by aggregating the few whites in both schools. Bell found this aspect of the plan acceptable.

In Mims v. Duval County School Board, 447 F.2d 1330 (5th Cir. 1971), plaintiffs-appellants objected to a desegregation plan requiring the closing of nine of twenty-seven former black schools while some former white schools in worse condition were kept open. The school board had argued that the contested schools were deteriorated, badly located, and/or subject to frequent intrusions. Bell writing for a three judge panel, found that, "The fact that some of the former white schools in the system were located on small sites or were older. . .does not rise to the level demonstrating proscribed discriminatory activity." 447 F.2d at 1333.

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In Ellis v. Board of Public Instruction of Orange County Florida, 465 F.2d 878 (5th Cir. 1972) (Ellis II), one question on appeal was whether the school board could close two schools in black neighborhoods (causing black children to be bused into white areas rather than having white children bused to the black schools), in view of appellants' contention that some older and more deteriorated schools in white areas were being kept open. Bell, writing for a three judge panel, held that the district court's finding that the black schools had been closed for economic reasons -- to take advantage of increased land values in an area that had become commercialized -- and because of traffic congestion was "amply supported and not clearly erroneous." 465 F.2d at 880.

Also at issue in Ellis was the extent to which integration must be system-wide. Thus, on the question of whether five elementary schools in the system had been desegregated, Bell found that three had never been desegregated, while two, which were 80% black in a school system that was 18% black, had been desegregated, and that any further desegregation could be achieved through the system's majority-to-minority transfer option. He also affirmed the district court's order of placement for displaced black principals and teachers.

In Davis v. Board of School Commissioners of Mobile County, 483 F.2d 1017 (5th Cir. 1973), involving the site selection for a school being constructed in response to a consent decree, there were two available sites. One, located in a black area,

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would have minimized the transportation of black students. The other, located in a sparsely populated area, would have required the transportation of substantial numbers of black students without causing a significant decrease in the transportation of white students. The school board stated its preference in terms of the "racial neutrality" of the sparsely populated area. Bell, in a good decision on the particular facts, ruled that site selection was within the province of the school board.

In National Education Association v. Board of School Commissioners of Mobile Co., 483 F.2d 1022 (5th Cir. 1973), the NEA and two named plaintiffs — black certified teachers who had been dismissed for lack of vacancies — sought an injunction on behalf of dismissed or demoted certified black teachers as a class, compelling the Board to reinstate them in place of the sixty-nine white teachers then working in the (now unified) school system who had only provisional teaching certificates. The trial court dismissed the complaint, with leave to amend for damages, after the two named plaintiffs were rehired. The NEA appealed from denial of the injunction. The Fifth Circuit affirmed the dismissal, in an opinion by Bell. Observing that no racial discrimination was alleged in the court below, Bell found that the NEA had failed to name class representatives, and had wrongfully filed a new lawsuit rather than intervening in an already pending class action which was in its final stages.

In a similar case, however, Lee v. Macon County Board of Education, 482 F.2d 1253 (5th Cir. 1973), Bell deemed intervenor

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status to be insufficient. The NEA already had been granted intervenor status by the district court and was appealing from the denial of a temporary restraining order sought to prevent the dismissal of black teachers and principals. There were four vacant principal slots to which the Board had refused to assign black principals whose schools had been closed. On appeal, Bell affirmed on other grounds by holding the NEA to be without standing to seek such injunctive relief.

In a third case involving the rights of black teachers, Harkless v. Sweeny Indep. School Dist., 427 F.2d 319 (5th Cir. 1970), Judge Bell for a 2-1 majority reversed a district court judgment that dismissed the teachers' claims for back pay on the ground that school officials had violated their civil rights in failing to renew their contracts. In distinguishing an injunction in a related fact pattern in Smith v. Board of Education of Morrilton School District, 365 F.2d 770 (8th Cir. 1966), where the Arkansas Teachers Association was found to have standing to represent a teacher class, Bell held that in Smith an "injunction was sought with money damages as an alternative" while in the instant case "only injunctive relief was sought." 482 F.2d at 1254-1255. Bell did not reach the question of whether the black teachers and principals had been denied positions in violation of the requirements established years earlier by the Fifth Circuit in Singleton v. Jackson Municipal Separate School District, 419 F.2d 1211 (5th Cir. 1969).

In Hereford v. Huntsville Board of Education, 504 F.2d

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857 (5th Cir. 1975), appellants urged adoption of a new integration plan on grounds that system-wide desegregation had not been achieved under the existing plan. There were two schools in question. Bell, writing for the court, upheld the existing plan for one school, stating that the requested plan would achieve little more. He found that the second school had, in fact, never been desegregated under the existing plan, and ordered a new plan for it.

Two of Judge Bell's cases involved civil rights protests stemming from school desegregation controversies. The first, Sweet v. Childs, 507 F.2d 675, rehearing denied, 518 F.2d 320 (5th Cir. 1975), was a case based on alleged racial discrimination in school discipline. The facts were disputed, but it can be said that following a sitdown by black students, they were given the option of returning to classes or leaving for the day and taking a zero for that day. After 124 students left, they were suspended en masse for ten days by radio announcement. The district court dismissed the case, and the Fifth Circuit in an opinion by Bell affirmed. Judge Brown dissented, objecting in part to the majority's failure to discuss the issue of expungement of school records.

The Sweet decision was issued on January 31, 1975, nine days after the Supreme Court's decision in Goss v. Lopez, 419 U.S. 565 (1975), holding that due process rights attach to any suspension from school. Bell's decision in Sweet did not refer to Goss. On rehearing, Bell considered Goss but found no

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need for a change in the result. In the second case, Turner v. Goolsby, 255 Supp. 725 (S.D.Ga. 1965), a class action was brought by civil rights leaders against county officials and the county school board. The plaintiffs alleged that certain state statutes were unconstitutional, that the officials and school board had conspired to deprive black children of civil rights, and they sought to have the county school system desegregated. In a per curiam opinion, in which Judge Bell joined, the court held that a statute that prohibited disturbance of persons lawfully assembled for religious purposes was unconstitutionally applied to civil rights marchers.

THE CIVIL RIGHTS MOVEMENT

Bell's decisions pertaining to the civil rights movement in the 1960's (and to other civil rights issues such as the closing of desegregated swimming pools) during his fourteen years on the Fifth Circuit did less to advance civil rights than several well-known members of the court (e.g., Tuttle, Rives, Goldberg) and more than some others (e.g., Coleman, Gewin). When precedent supported a decision in favor of civil rights, he supported precedent. In several cases where he limited civil rights actions, as in cases seeking to remove state prosecutions to the federal courts, he decided issues which had not been directly presented contrary to civil rights interests. In the area of proving discriminatory intent as opposed to discriminatory effect, Judge Bell did not apply any single theory in his decisions.

Descriptions of Griffin Bell's general civil rights opinions follow.

In United States v. Barnett, 330 F.2d 369 (5th Cir. 1963), the Fifth Circuit, after issuing several contempt orders against the Governor and Lt. Governor of the State of Mississippi for refusing to admit James Meredith to the University of Mississippi, split on the issue of whether the Governor and Lt. Governor were entitled to a jury trial for criminal contempt. Tuttle, Rives, Brown and Wisdom believed that no jury was required to try a violation of a court of appeals order. Cameron, Jones, Gewin and Bell argued that jury trial was necessary. On certi-

fication, the Supreme Court in United States v. Barnett, 376 U.S. 681 (1964), in a decision contrary to the position of the ACLU, held that there was no right to a jury trial.

In the Fifth Circuit, each of the dissenting judges had filed a separate opinion, in which the facts were restated at length. The first two paragraphs of Bell's opinion stressed the need for obedience even to unpopular laws:

"Prior to becoming President, Abraham Lincoln, when told with reference to slavery that the law was wrong in taking a man's liberty without trial by jury, responded that slavery was ungodly.

'But it is the law of the land, and we must obey it as we find it.'

"New legal precedents of recent years, with resultant changes in the existing order, have brought this maxim of another day, expressing an American tradition, into sharp focus. The necessary accommodation has differed in degree and manner; running the scale from prompt compliance, on through a middle ground of painful but responsible and dignified adjustment, down to extreme recalcitrance or outright refusal even to obey court orders entered, as they must be, pursuant to these precedents." 330 F.2d at 429 [footnote omitted].

Kelly v. Page, 335 F.2d 114 (5th Cir. 1964), arose out of civil rights demonstrations in opposition to official segregation in Albany, Georgia. City officials sought to enjoin the demonstrations, and the demonstrators cross-moved to enjoin interference. The district court denied both sets of injunctions. On appeal, Bell (with Ingraham and Cameron) affirmed the denial of the officials' injunction, and reversed and remanded the denial of the demonstrators' injunction for evidentiary hearings to determine whether the complained-about interference contin-

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ued. In his opinion, Bell outlined various First Amendment rights of the demonstrators.

In Gregory v. Meyer, 376 F.2d 509 (5th Cir. 1967), reversing a district court, Judge Bell (with Brown and Brewster) held that a public restaurant which was three blocks from a federal highway and whose food was almost all shipped in interstate commerce was a place of public accommodations covered by Title II of the Civil Rights Act of 1964. This decision followed the Supreme Court rulings in Katzbach v. McClung, 379 U.S. 294 (1964) and Heart of Atlanta Motel v. United States, 379 U.S. 241 (1964).

In Palmer v. Thompson, 419 F.2d 1222 (5th Cir. 1970) (en banc) the Fifth Circuit, by a 7-6 vote with Bell in the majority, upheld the decision of the City of Jackson, Mississippi to close its public swimming pools rather than to operate them on a racially integrated basis, on the grounds that desegregated pools would result in public disorder and would be uneconomical.

In a special concurring opinion, Judge Bell (joined by all of the other judges who had also joined the majority opinion) said that the "mere" fact "that the closings here were racially motivated...is not proof of a racially discriminatory purpose in the closing." 419 F.2d at 1229. The only proof which would satisfy Judge Bell's view of the "racially discriminatory purpose" test was evidence that racial discrimination was the subjective purpose of the decision-makers. Bell held that the

officials' testimony (that public order and economics, not racial discrimination, were their purpose) ruled out any subjective discriminatory purpose.

The closing of the public swimming pools was thereafter affirmed by the Supreme Court, in an opinion by Justice Black. Palmer v. Thompson, 403 U.S. 207 (1971).

Subsequent to Judge Bell's opinion in Palmer, but prior to the Supreme Court's affirmance, a Fifth Circuit panel in Hawkins v. Town of Shaw, 437 F.2d 1286 (5th Cir. 1971), held that the provision of unequal municipal services to blacks was unconstitutionally discriminatory. The panel opinion by Tuttle (with Goldberg) held that although the record contained no evidence of discriminatory intent, "actual intent or motive need not be directly proved" under the Fourteenth Amendment. 437 F.2d at 1292. Judge Bell, in a special concurrence, stated that discriminatory effect was legally insufficient, that a racial classification too had to be shown, and that such a racial classification had been shown in the case.

In the en banc decision in Hawkins v. Town of Shaw, 461 F.2d 1171 (5th Cir. 1972), rendered after the Supreme Court's decision in Palmer, the Fifth Circuit in a per curiam decision, with Bell concurring, held that the record evidenced both discriminatory effect and discriminatory intent.

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In Anderson v. Nosser, 438 F.2d 183 (5th Cir. 1971), a Fifth Circuit panel reviewed a district court dismissal of a damage action brought against state officials who had arrested a group of civil rights demonstrators, incarcerated them to assure their presence at trial, required them to strip naked and to remain in such a state for up to 32 hours, and detained them in cells with inadequate hygienic facilities and no bedding.

Goldberg (with Tuttle) reversed the dismissal, held that the state officials had violated the protestors' rights against cruel and unusual punishment and rights to due process, held that the evidence was sufficient to require entry of a directed verdict against all of the state officials, and remanded for a determination of the amount of damages.

In a half-page special concurring opinion, Bell offered dicta on a related issue: the liability of federal officials. Bell indicated his "continuing belief that all police . . . whether state or federal, should be subject to the same accountability under law for their conduct." 438 F.2d at 205. Noting that federal officials at that time were not liable for the same acts for which state officials were liable, Bell stated: "It is regrettable that we have one law for Athens and another for Rome." Id.

Subsequently Anderson was reviewed by the Fifth Circuit

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banc. Anderson v. Nosser, 456 F.2d 835 (5th Circ. 1972) (en banc), vacating and modifying 438 F. 2d 183 (5th Cir. 1972). Bell, writing for the majority, declined to rule upon whether the demonstrators' rights against cruel and unusual punishment had been violated, but held that their due process rights had been violated. As to damages, Bell held that the evidence was sufficient for a directed verdict against only two of the officials, and that the evidence as to the many other officials should go to the jury.

Five dissenting judges contended that the evidence was sufficient for a directed verdict against all of the officials.

In Lefton v. City of Hattiesburg, 333 F.2d 280 (5th Cir. 1964), Judge Wright (with Rives and Bell) granted a mandamus petition on behalf of forty demonstrators arrested at the same time and place who were denied the opportunity to file a removal petition by the clerk of the federal district court. Judge Wright held that one removal petition was sufficient for all forty demonstrators although the district judge could exercise his discretion on this matter, and that the filing fees and bonding requirements required by the district court were not authorized by statute.

In a special concurrence, Bell expressed his preference for a separate removal petition on behalf of each of the forty demonstrators on the grounds, inter alia, that such "would tend to effectuate a more orderly procedure in the District Court."

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333 F.2d at 287. Bell also pointed out to the district court that, "The removal statute may not be used to thwart local law enforcement." Id.

Rachel v. State of Georgia, 342 F.2d 336 (5th Cir. 1965), reh. denied, 343 F.2d 909 (5th Cir. 1965), involved the application of the federal removal statute to sit-in demonstrators being prosecuted by the state for violating its anti-trespass statute. 28 U.S.C. §1443(1) allows removal to federal court whenever a criminal prosecution is brought against any person who is denied or cannot enforce "a right under any law providing for the equal civil rights of citizens...or of all persons."

Judge Tuttle (with Whitehurst) first held that the demonstrators had sufficiently alleged a removal claim under §1443 (1) particularly in view of the Supreme Court's retroactive application of Title II of the Civil Rights Act of 1964 in Hamm v. City of Rock Hill, 379 U.S. 306 (1964); he then directed that if the demonstrators on remand proved that their arrests were for racial reasons, the district court was required to dismiss the prosecutions.

Judge Bell concurred in the first aspect of the majority opinion but dissented from the second aspect. In Bell's view, §1443 did not allow the federal courts to determine whether the state would comply with Hamm; instead, he argued that it was for the state court in which the prosecution was lodged to determine whether the arrests were racially motivated. He said that "a federal court should not lightly intrude into a sphere

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of activity left to state and local government under the Constitution: the maintenance of local order." 342 F.2d at 345.

Judge Tuttle's majority opinion was affirmed. Georgia v. Rachel, 384 U.S. 780 (1966).

Peacock v. City of Greenwood, 347 F.2d 679 (5th Cir. 1965), involved a removal petition under 28 U.S.C. §1443 (1) sought by civil rights activists being prosecuted for voter registration activities. Judge Bell (with Wisdom and Woodbury) followed the Fifth Circuit's earlier decision in Rachel and held that the federal plaintiffs' removal petition alleging discriminatory application of a state statute sufficiently alleged a denial of equal civil rights under §1443.

Bell went on to discuss two novel issues not directly presented. First, he held that §1443 (1) applied only to laws providing for equal rights and thus not to the due process clause of the Fourteenth Amendment. Second, Bell held that §1443 (2), which allows removal of a prosecution for "any act under color of authority derived from any law providing for equal rights," is not available to private persons but only to federal officials seeking removal.

The Supreme Court on review sustained Bell on the latter

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two issues. But the Court reversed Bell on the primary issue, holding that the federal plaintiffs had not alleged and would be unable to prove that they would be conclusively denied equal civil rights by the Mississippi state courts. Greenwood v. Peacock, 384 U.S. 808 (1966).

Walker v. State of Georgia, 405 F.2d 1191 (5th Cir. 1969), involved a removal petition of sit-in demonstrators. Reversing the district court's denial of the petition, Judge Bell (with Coleman and Morgan) held that since the sit-in activities were protected by Title II of the Civil Rights Act of 1964, a federal court hearing on the state motivation for arrest and prosecution was required. In this ruling Bell followed the Supreme Court decision in Rachel and a number of Fifth Circuit opinions.

Perkins v. State of Mississippi, 455 F.2d 7 (5th Cir. 1972), panel opinion adopted en banc, 470 F.2d 1371 (5th Cir. 1972), concerned the removal of state court prosecutions to federal court under 28 U.S.C. §1443 pursuant to 18 U.S.C. §245, the criminal section in Title II of the Civil Rights Act of 1968. The federal plaintiffs seeking removal had been arrested on the highway in Rankin County, Mississippi, for resisting arrest several hours after they had participated in a civil rights demonstration in neighboring Simpson County. The federal district court denied the removal petition.

On appeal, Judge Coleman (with Clarke) affirmed. Judge Brown dissented at length, 455 F.2d at 11-61.

The panel opinion was adopted en banc in a one sentence per curiam opinion, Judge Bell voting with the majority. Bell (with Gewin) also filed a special concurrence. Brown (with Wisdom, Goldberg and Ainsworth) dissented.

In his special concurrence Bell went beyond the per curiam opinion and the panel majority by stating that "18 U.S.C.A. §245 [the criminal section enacted in Title II of the Civil Rights Act of 1968] is not a law providing for equal civil rights within the confines of [28 U.S.C.] §1443." 470 F. 2d at 1371.

JURY DISCRIMINATION

Griffin Bell participated in relatively few cases concerning racial discrimination in the selection of juries. In those in which he participated he generally followed prior Fifth Circuit law.

In Preston v. Mandeville, 428 F.2d 1372 (5th Cir. 1970), Judge Bell significantly advanced the right to trial by jury. In this case, Judge Bell wrote the opinion which reversed the dismissal of an action by blacks seeking to serve on juries in Mobile County, Alabama. The plaintiffs had shown a thirteen percent disparity between the jury list and the population, but their proof had been by scientific sampling of the eighteen thousand name jury list. Bell held that this method of proof was sufficient, and that plaintiffs had proved a prima facie case of racial discrimination.

This case broke new ground in that, for the first time, a federal court approved the use of scientific sampling to demonstrate the make-up of the entire list. On the prima facie case, it followed recent Supreme Court decisions in Carter v. Jury Commission of Greene County, 396 U.S. 320 (1970), and Turner v. Fouche, 296 U.S. 346 (1970).

Turner v. Fouche, 290 F.Supp. 648 (S.D. Ga. 1968) (three-judge court), vacated, 396 U.S. 346 (1970), was an affirmative lawsuit challenging the method by which grand jurors were chosen. In an opinion by Bell, the three-judge court upheld the constitutionality of a discretionary statute for juror qualification and required the defendants to reconstitute the grand jury list. Although the reconstituted list had a 23 percent disparity between it and the black population, the court approved the revised list. It also upheld the requirement that grand jurors, who elected the school board, be freeholders.

The Supreme Court affirmed the constitutionality of the discretionary statute for juror qualification, but held the freeholder requirement unconstitutional. It also vacated the finding that the 23 percent disparity was constitutionally acceptable.

In Cobb v. Balkcom, 339 F.2d 95 (5th Cir. 1964), Bell reversed the denial of relief to a black man tried in a county where no blacks had served on grand or traverse juries for thirty years, where officials testified that they had never heard of counsel for a black defendant making a jury challenge, and where the trial lawyer for the petitioner said he not only had never seen a black on a traverse jury in the county, but never raised such issues because "he had never seen a jury panel in the county from which a fair and impartial jury could not be obtained even though there were no Negroes on the panel." 339 F.2d at 98. Bell's decision was in accord with the rulings of Whitus

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v. Balkcom, 333 F.2d 496 (5th Cir. 1964); United States ex rel. Seals v. Wiman, 304 F.2d 53 (5th Cir. 1962); and United States ex rel. Goldsby v. Harpole, 263 F.2d 71 (5th Cir. 1958).

In Labat v. Bennett, 365 F.2d 698 (5th Cir. 1968), habeas corpus was sought for a man convicted in Orleans Parish, Louisiana. The panel majority found discrimination in the selection of juries. In that parish, blacks made up 10 percent of the panels summoned for jury service, though they were 32 percent of the population. No black ever served on a grand or petit jury panel during the five years which the evidence covered. Indeed, only once had a black man served on a grand jury within the memory of people living in that parish, and he served because he was mistakenly selected as a white man, see Michel v. Louisiana, 350 U.S. 91 (1955); Eubanks v. Louisiana, 356 U.S. 584 (1958).

Judge Bell dissented. While agreeing that the exclusion of daily wage earners was unconstitutional as the majority found, he was unwilling to find a prima facie case of racial discrimination.

The Supreme Court denied review of the case 386 U.S. 991 (1969).

In Brooks v. Beto, 366 F.2d 1 (5th Cir. 1966), the Fifth Circuit upheld the constitutionality of intentionally adding blacks to a jury list to make the list conform to constitutional

standards of cross-sectional representation. Judge Bell wrote a concurring opinion noting that the majority opinion required not only that jury lists represent a fair cross section of the community, but that the persons making the selection of jurors must be familiar with the segments of their communities. He feared that persons would be able to challenge their convictions if they could show that the selectors did not have this knowledge, though the list itself was free from fault.

Rabinowitz v. United States, 366 F.2d 34 (5th Cir. 1966), was a landmark decision involving federal jury selection. The central issue was whether the educational requirements in the applicable federal statute were maximum standards, which could not be added to, or minimum standards which would allow the selectors, called keymen, to seek the most qualified persons. The latter resulted in fewer blacks being on the juries. The majority ruled the standards were maximum, and found racial discrimination resulting from the additional standards.

Judge Bell concurred in part and dissented in part. He felt that the defendants had failed to meet their burden of proving that the jury list was not properly composed despite the fact that blacks made up 5.9 percent of the jury list where the population was 34.55 percent black. He thought the fact that the keymen were white and therefore made few contacts with blacks was essentially irrelevant. He concluded that the percentage disparity was adequately explained by the difference in literacy between the races.

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EMPLOYMENT DISCRIMINATION

A review of Griffin Bell's opinions in this area requires the conclusion that Bell's opinions cannot be defined as pro- or anti-civil libertarian.

A review of Bell's employment discrimination decisions follows.

In Wells v. Ramsay, Scarlett & Co., Inc., 506 F.2d 436 (5th Cir. 1975), Judge Bell (with Ainsworth and Roney), affirmed a district court's denial of class certification and the court's dismissal of an individual claim of discrimination. Denial of class certification was affirmed on the grounds that there was an insufficient "nexus" between the plaintiff as a non-union foreman and the class members as others who were or might be employed by defendant employer. The dismissal was affirmed on the grounds that the "record simply does not support [plaintiff's] claim." Id. at 438.

In Petterway v. Veterans Administration Hospital, 495 F.2d 1223 (5th Cir. 1974), Judge Bell (with Coleman and Roney) reversed a district court's decision which had dismissed a non-Title VII race claim on grounds of sovereign immunity. Applying the Fifth Circuit decision in Beale v. Blount, Bell noted that those claims which were in the nature of mandamus were proper, and that the district court further should have determined whether the individual defendant's actions were ultra vires.

In the course of the decision, Bell noted that exhaustion of administrative remedies was not raised, and that retroactivity of Title VII was not applicable given the plaintiff's failure to file timely. In a subsequent decision, the Supreme Court in Brown v. GSA, ___ U.S. ___ (1976) held that Title VII preempts all other

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employment discrimination remedies against the federal government.

In Duhan v. Goodyear Tire & Rubber Co., 494 F.2d 817 (5th Cir. 1974), Judge Bell (with Tuttle and Goldberg) vacated and remanded a district court's denial of any relief beyond enjoining the use of discriminatory written tests. Following earlier Fifth Circuit decisions, Bell required an injunction against the employer's use of discriminatory education requirements, held that some form of back pay and seniority revision was necessary, and held that plaintiffs were entitled to attorneys fees.

In Pettway v. American Cast Iron Pipe Co., 494 F.2d 211-267 (5th Cir. 1974), Judge Tuttle (with Goldberg) reversed a district court decision denying class-wide back pay and retroactive seniority under Title VII. In a review of the employer's past and present practices, of the effects of the past practices on present practices, and of the applicable Title VII law, Judge Tuttle outlined the type of class-wide back pay and seniority relief to which the plaintiffs were entitled.

In a special concurrence, Judge Bell concurred in the result but dissociated himself from Tuttle's analysis. 494 F.2d at 267-268. The Tuttle analysis was subsequently adopted by the Supreme Court as to back pay in Albemarle Paper Co. v. Moody, 422 U.S. 405 (1975) and as to retroactive seniority in Franks v. Bowman Transportation Co., ___ U.S. ___ (1976).

In Humphrey v. Southwestern Portland Cement Company, 488 F.2d 691 (5th Cir. 1974), Judge Bell (with Dyer and Clark) reversed a district court's finding that the plaintiff had been denied a promotion because of discrimination. Bell held that

the district court erred in making inferences favorable to plaintiff from written documents contrary to the live testimony about those documents, and that the district court thus should have entered a judgment for the employer.

In Rios v. Reynolds Metals Co., 467 F.2d 54 (5th Cir. 1972), Judge Bell (with Dyer and Clark) reversed the dismissal of a Title VII complaint filed after an unfavorable union arbitration decision. Following Fifth Circuit law in Hutchings v. U.S. Industries, 428 F.2d 303 (5th Cir. 1970), and Sixth Circuit law in Newman v. Avco Corp., 451 F.2d 743 (6th Cir. 1971), Bell held that a district court is not bound by an arbitration decision.

In Hodgson v. Ewing, 451 F.2d 526 (5th Cir. 1971), Judge Bell (with Ainsworth and Godbold) affirmed a district court's finding that an employer who engaged in extensive land development was subject to the minimum wage requirements, etc., of the Fair Labor Standards Act. Bell correctly applied several Supreme Court decisions under the FLSA.

In Caldwell v. National Brewing Co., 443 F.2d 1044 (5th Cir. 1971), Judge Bell (with Wisdom and Ainsworth) reversed a district court's dismissal of a §1981 action filed by a plaintiff who had intentionally bypassed his Title VII remedies. Following earlier circuit court decisions, the panel held that a §1981 action could not be dismissed because of a failure to follow Title VII remedies. In Sanders v. Dobbs Houses, 431 F.2d 1097 (5th Cir. 1970), and in Boudreaux v. Baton Rouge Marine Contracting Co., 437 F.2d 1011 (5th Cir. 1971), the Fifth Circuit had held that an unintentional failure to meet the Title VII prerequisite did not bar a §1981 action. In Young v. IT&T, 438

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F.2d 757 (3d Cir. 1971), the Third Circuit had gone a bit further by holding that a §1981 action similarly is not barred by an intentional failure to pursue the Title VII route. In his decision, Dell applied the spirit of the Fifth Circuit decisions and the holding by the Third Circuit. He did opine, however, as did the Third Circuit, that a district court properly could take jurisdiction of the §1981 action but direct the parties to pursue the conciliation procedures under Title VII.

In Oatis v. Crown Zellerbach Corp., 398 F. 2d 496 (5th Cir. 1968), rev'g 271 F. Supp. 258 (E.D. La. 1967), Judge Bell (with Ainsworth and Godbold) held that as long as one plaintiff has met the administrative prerequisites to filing a Title VII action, other named plaintiffs and members of the class may be represented by that one plaintiff in a Title VII class action. Bell also held that the scope of the action was limited to the scope of the filing plaintiff's administrative complaint.

The first aspect of the ruling, which has been uniformly followed, was a forward-looking decision under Title VII class action law and provided an important link to the subsequent development of Title VII class action law. The second aspect was restrictive, and its limitation has been by other courts of appeals decisions.

In Overnite Transportation Co. v. EEOC, 397 F.2d 368 (5th Cir. 1968), Judge Bell (with Brown and Hooper) affirmed a district court's order requiring employer information to be provided to the EEOC. Judge Bell applied the statutory language of Title VII to bar an employer from questioning the relevancy

of requested information after the 20-day period allowed in the statute. Bell correctly applied the statutory language of Title VII.

Allen v. City of Mobile, 466 F.2d 122 (5th Cir. 1972), aff'g 331 F.Supp. 1134 (S.D. Ala. 1971), a non-Title VII case, involved, inter alia, the job relatedness of a severely discriminatory written test used to select police officers. Although the test had not been validated pursuant to any professional standards much less pursuant to the EEOC Guidelines, the district court held the test to be job related and hence lawful.

The Fifth Circuit affirmed in an opinion by Bell and Roney. Goldberg dissented at length, 466 F.2d at 122-131.

In Wade v. Mississippi Coop. Extension Service, 528 F.2d 508 (5th Cir. 1976), another non-Title VII case, the district court had found extensive discriminatory practices including use of discriminatory tests not validated pursuant to the EEOC Guidelines, and awarded injunctive relief, back pay, and attorneys fees.

On appeal, Bell (with Dyer and Mehrtens) relied on the per curiam majority opinion in Allen to hold that test validation pursuant to the EEOC Guidelines still was not required by the Fifth Circuit in non-Title VII cases; he affirmed the district court findings, however, on the ground that the findings of non-job-relatedness were not clearly erroneous. As to the district court awards of back pay and attorneys fees, Bell vacated and remanded for determinations of \$1981 and \$1983 liability, of sovereign immunity, and of official immunity.

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Bell's refusal to apply the EEOC Guidelines to public employers in non-Title VII cases left the Fifth Circuit out of step with every other circuit which had faced this issue. Compare, e.g., Castro (1st Cir. 1971), Chance (2d Cir. 1972), Bridgeport (2d Cir. 1972), Harper (4th Cir. 1973), Carter (8th Cir. 1972), Douglas (D.C. Cir. 1975).

Nevertheless, five months later, the Supreme Court in Washington v. Davis, 426 U.S. ____ (1976), reached his result by holding in a non-Title VII employment case that without proof of intentional discrimination the rational basis standard of review governed, thereby obviating the need for test validation pursuant to the EEOC Guidelines.

In a number of Title VII cases Judge Bell decided jurisdictional or procedural issues in favor of civil rights plaintiffs. For example, sitting as a district judge in Weeks v. Southern Bell Tel. & Tel. Co., 359 F. Supp. 1219 (S.D.Ga 1971), he awarded attorneys fees to trial lawyers for plaintiff in a sex discrimination case where the plaintiff lost at trial and prevailed on appeal. In Oatis v. Crown Zellerbach Corp., 398 F.2d 496 (5th Cir. 1968), he held that a member of a class bringing a Title VII action need not have brought a prior charge before the Equal Employment Opportunity Commission. In Caldwell v. National Brewing Co., 443 F.2d 1044 (5th Cir. 1971), he reached a similar result and also sustained the plaintiff's independent causes of action under the Civil Rights Acts of 1866 and 1964. In Petterway v. V.A. Admin. Hospital, 495 F.2d 1223 (5th Cir. 1974), he narrowly defined the doctrine of sovereign immunity so as to preserve the possibility of a recovery by the plaintiff.

One other case in which Judge Bell reached a pro-civil rights result is Wade v. Mississippi Cooperative Extension Service, 528 F.2d 508 (5th Cir. 1976), where he issued broad relief to black employees and patrons of state agricultural extension services who claimed racial discrimination by the officials sued.

HOUSING DISCRIMINATION

Griffin Bell wrote only two reported opinions in housing discrimination suits. The results were mixed from a civil rights standpoint.

In Dean v. Ashling, 409 F.2d 754 (5th Cir. 1969), Bell (with Phillips and Morgan) ruled that a trailer park was within the "other establishments" provision of the public accommodations section in Title II of the Civil Rights Act. The district court had erred in dismissing the case on grounds that plaintiffs had failed to establish that there was space for rent at the time they were refused. Judge Bell's opinion correctly stated that:

"Plaintiffs needed to show no more than that the policy or practice of the parks was to deny Negroes and that they were in fact denied. The burden then should have been shifted to the trailer park operators to justify the denial." 409 F.2d at 756.

In Love v. DeCarlo Homes, Inc., 482 F.2d 613 (5th Cir. 1973), appellants representing black home buyers as a class alleged that a residential developer and two banks violated the Civil Rights Act of 1866 by charging more for homes in a black subdivision than they charged for comparable housing in proximately located white subdivisions. The buyers appealed from summary judgment against them, relying in part on the decision in Baker v. F & F Investment, 420 F.2d 1191 (7th Cir. 1970), holding that the charging of higher prices and more burdensome terms for black purchasers than would have been charged to

whites violated the Civil Rights Act of 1866.

Bell, writing for the Court, conceded some similarities to the complaint in Baker, but upheld the dismissal on the ground that plaintiffs-appellants had failed to establish that the developer either had refused to sell blacks homes located in the white subdivisions or had sold homes in the black subdivision to whites at more favorable terms. It is difficult to ascertain the precise legal theory on which Bell relied since he rejected the segregated markets theory — one black, one white — on which Baker rested. Further, the plaintiffs in DeCarlo were faced with an easier fact pattern than were the plaintiffs in Baker because the DeCarlo plaintiffs could point to the existence of comparable and proximately located new housing offered by the same developer for which objective valuation was easier to establish.

VOTING RIGHTS

In the wake of Baker v. Carr, 369 U.S. 186 (1962), and in the years subsequent to the passage of the Voting Rights Act of 1965, Griffin Bell rendered opinions in a large number of voting rights cases. A review of these opinions does not reveal a common thread. Analysis is particularly difficult because a number of the opinions are unsigned per curiam opinions with Bell voting with the majority. Some of the opinions are pro-civil libertarian, while others are not. Some of the opinions lie well within precedent while others do not.

A review of Griffin Bell's voting rights opinions follows.

In Sanders v. Gray, 203 F. Supp. 158 (N.D. Ga. 1962) (three judge court) Bell (with Tuttle and Hooper) held that the county unit system, by which party nominees were selected by unit vote, the number of units being assigned by county size but greatly malapportioned, was unconstitutional in practice but not per se.

The Supreme Court affirmed the injunction but vacated for further relief, Gray v. Sanders, 372 U.S. 368 (1963). The Supreme Court held that no weighting of votes was to be allowed, because even a perfect apportionment of county units would deny the votes of the losing candidate in any county.

Toombs v. Fortson, 205 F. Supp. 248 (N.D. Ga. 1962) (three judge court) (per Tuttle, with Bell and Morgan), struck down the apportionment of the state legislature of Georgia. A later opinion approved an interim apportionment plan, though it was

constitutionally deficient, allowing the legislature more time to reapportion. Toombs v. Fortson, 241 F. Supp. 65 (N.D. Ga. 1965) (three judge court), summarily affirmed 384 U.S. 210 (1966).

Wesberry v. Vandiver, 206 F. Supp. 276 (N.D. Ga. 1962) (three judge court) (per Bell with Morgan, Tuttle concurring and dissenting), involved an effort to apply the one person one vote principle to congressional districts. Georgia's fifth district had two to three times the number of persons as other districts. While agreeing that the statute was arbitrary, the court dismissed, believing Colgrove v. Green, 328 U.S. 549 (1946), had not been overruled. Judge Bell held, essentially, that there was a want of equity in the court stepping into the state-federal relationship. Judge Tuttle concurred in the holding that injunctive relief should be denied to give the legislature an opportunity to reapportion, but did not concur in the holding that the federal courts could grant no relief.

The Supreme Court reversed, Wesberry v. Sanders, 376 U.S. 1 (1964), ruling that apart from any disparity among the states in the number of members of Congress each state has, a state could not malapportion within its boundaries.

United States v. Ward, 345 F 2d 857 (5th Cir. 1965), was an action against the voter registrar in George County, Mississippi. The district court had entered a permanent injunction restraining officials from applying more stringent standards to black than to whites. The United States appealed. Judge Bell, writing for the

panel, held that where there is a finding of racial discrimination, the Voting Rights Act, 42 U.S.C. §1971(e), required that such a finding be as to whether or not the discrimination was pursuant to a pattern or practice. Bell further ruled that it was erroneous for the district court to deny relief in the form of "freezing" -- a legal concept by which a state was prohibited, where it had discriminated in voter registration in the past, from adopting more stringent, albeit equally applied standards, when blacks thereafter sought to register.

Both holdings fit squarely within prior law. That the finding as to the existence of a pattern or practice was mandatory had been settled in United States v. Mississippi, 339 F.2d 679 (5th Cir. 1964).

United States v. Lynd, 349 F.2d 785 (5th Cir. 1965), was another action brought against a voter registrar in which Judge Bell wrote the opinion applying the freezing principle.

Judge Bell concurred specially in an earlier Lynd opinion, United States v. Lynd, 321 F.2d 26 (5th Cir. 1963). In his special concurrence, Bell objected to hearing appeals from denials of motions for preliminary injunctions, an appellate step which had been used by the Fifth Circuit to overcome inaction of recalcitrant judges. Bell's position was that while the court had the power to act as it did, in his judgment "it was more properly a matter for mandamus." Use of the writ of mandamus, Judge Bell believed:

"...would have afforded the District Court a chance to be heard. It might have avoided the necessity of this court taking the case over prior to a decision in the District Court. It would have avoided the multitudinous handling, by way of contempt hearings and otherwise, since the grant of the original relief by this court, with no further action having been taken in the interim, on the main case in the District Court. This case serves as a classic example of the pitfalls to be encountered; with the attendant disruption and delays in the orderly administration of justice when courts depart from the time-tested processes of law." 321 F.2d at 28.

Morrison v. Fortson, 261 F. Supp. 538 (N.D. Ga. 1966) (per curiam) (Bell, Morgan & Smith), was a suit by illiterate and semi-literate voters challenging the ban on using stickers or stamps with write-in candidates' names. The court upheld the claim that the statute was unduly restrictive and unconstitutional.

Plaintiffs also challenged a statute limiting assistance by one elector to one voter. The statute had allowed assisters to help ten people. The court struck down the limitation and ordered that each elector could assist up to ten voters. (The amended statute did not apply to the physically infirm, only illiterates.) The court ruled:

"The new statute, in our view, goes too far. It is unduly restrictive. We hold that it is unconstitutional in that it conflicts with the Fourteenth Amendment to the Federal Constitution, implemented by the Voting Rights Act of 1965 which extends the franchise to illiterates." 261 F. Supp. at 541.

In Morris v. Fortson, 262 F. Supp. 93 (N.D. Ga. 1966) (per curiam) (Tuttle, Bell & Morgan), the complaint was filed when the governor's race did not result in a majority vote for any one

candidate and the legislative election for governor was about to be held. Plaintiffs alleged that allowing a malapportioned general assembly to elect a governor was in violation of the one person-one vote principle. The court held for plaintiffs because a candidate receiving a lesser number of popular votes could be elected by the malapportioned assembly.

The Supreme Court reversed 5-4, Forston v. Morris, 385 U.S. 231 (1966), stating that the district court erroneously relied on Gray v. Sanders, 372 U.S. 368 (1963), which had held to be unconstitutional the county unit system of electing governors but did not require states to elect their governors by popular vote.

Stoner v. Fortson, 359 F. Supp. 579 (N.D. Ga. 1972) (three judge court), was brought by J. B. Stoner alleging that he was financially able to pay the \$2,150 required to run for the United States Senate but was unwilling to do so because he needed the money for his campaign. The court upheld standing since Stoner alleged that he could not afford the fee, that he was unwilling to pay the fee, but that he would pay the fee if need be with the help of voters who are friends. In a per curiam affirmance, the Supreme Court struck down the fee under Bullock v. Carter, 405 U.S. 134 (1972).

Stoner v. Fortson, 379 F. Supp. 704 (N.D. Ga. 1974) (three judge court) (O'Kelley, Bell and Henderson) was an action by Stoner challenging the state campaign financial disclosure act's require-

ment of disclosure of contributions to non-judicial political candidates of \$101 or more. The court recognized that First Amendment rights might be infringed (Stoner had alleged that he espoused unpopular, rightist views) but upheld that statute as protecting the integrity of the electoral process.

Stoner v. Fortson, 345 F. Supp. 1369 (N.D. Ga. 1972) (three judge court) was an action to enjoin the placing of David H. Gambrell on the ballot for United States Senator with the designation "incumbent". Gambrell had been appointed to the office by Governor Carter to fill the unexpired term of Richard B. Russell. Injunctive relief was denied by the court because the case was filed too late for a court-ordered reprinting of the ballots.

In Edwards v. Sammons, 437 F. 2d 1240 (5th Cir. 1971), a black candidate who had lost an election by five votes brought an action alleging that certain voters were unconstitutionally purged from the registration list. One hundred ninety-two persons had been purged from the registration list the week before the election. Judge Bell reversed the district court's decision to abstain, which had been based on allowing the state an opportunity to decide the constitutionality of the challenged provisions, one of which was the requirement of paying a property tax before being able to vote.

This opinion reflects an accurate application of the law: federal courts should not abstain unless the state act could be narrowed by state court construction to meet constitutional

standards, and that when the franchise was at issue federal courts have a more active responsibility.

Reese v. Dallas County, Alabama, 505 F. 2d 879 (5th Cir. 1974) (en banc), rev'd, 421 U.S. 477 (1975), was an action brought by voters of city challenging residential districts for county commission seats though elections were at-large. The effect of the residential districts was that only one resident of the four member commission could be from the city, though the city had held the population of the county. Relying on Dusch v. Davis, 387 U.S. 112 (1967), the panel majority reversed the district court's dismissal. Judge Bell concurred in part and dissented in part, stating that while he believed the plan was prima facially discriminatory, he would remand for further evidentiary hearings. Racial discrimination was not at issue in the case. The Supreme Court unanimously reversed the Fifth Circuit, holding that the court had incorrectly ruled that the plan was invalid as a matter of law.

In Williams v. The Democratic Party of Georgia, C.A. No. 16286 (N.D. Ga. April 6, 1972) (three judge court), aff'd, 409 U.S. 809 (1972), the plaintiff sought to enjoin the state Democratic Party from conducting delegate selection until the party had submitted its delegate selection rules under §5 of the Voting Rights Act of 1965, 42 U.S.C. §1973c. Prior to 1972, the party delegates to the National Convention had been selected by the governor but in 1972 the procedure was changed to select delegates by open conventions in the ten congressional districts. The per curiam opinion stated

that while the Voting Rights Act referred to "state or political subdivisions", the Act made no reference to political parties. And while there may be some doubt as to whether the party was a political subdivision, the court noted that the submission under §5 must be done by the chief legal officer or other appropriate official of such state or political subdivision. The court concluded that since the state has no connection with the delegate selection except to allow the party rules and regulations to be filed with the Secretary of State, there was no way for the state party to compel the state to seek approval of the party's rules under the Voting Rights Act. For this reason the court concluded that the Voting Rights Act did not apply to the rules and regulations promulgated by the state party.

Toney v. White, 488 F.2d 310 (5th Cir.) (en banc), modifying 476 F.2d 203 (5th Cir. 1973), was a racial discrimination challenge brought by defeated black candidates seeking to upset an election alleging unconstitutional purging of the registration list. The district court granted relief, setting aside the election. On appeal, the panel affirmed the prospective relief but held the court below erred in upsetting the election. The ruling was that there either had to be gross, intentional racial discrimination or the suit had to be filed prior to the election.

Judge Bell wrote the en banc opinion holding that the election should be upset since plaintiffs could not be faulted for not

bringing the suit prior to election. He agreed that if there was no rule requiring pre-election suit, parties would be encouraged to wait until after the election, and seeking to upset it, they would get two shots at the electorate. On the facts of the case, where the purge started only a month before the election, where private lawyers would have to be found and the facts investigated before suing, etc., the court found no waiver by plaintiffs.

Bond v. Fortson, 334 F. Supp. 1192 (N.D. Ga. 1971) (three judge court) summarily aff'd, 404 U.S. 930 (1971) (per curiam), was a suit by citizens, including Julian Bond and Andrew Young, seeking to overturn Georgia's run-off provision (majority vote requirement) for members of Congress. Defendants were granted summary judgment on the ground that the issue was not ripe for review. The court found that plaintiffs did not know when or if they would run for Congress, or indeed if there would ever be a run-off.

In Burns v. Fortson, C.A. No. 17179 (N.D. Ga. Sept. 27, 1972) (three judge court) affirmed, 410 U.S. 686 (1973), plaintiffs challenged Georgia's registration cut-off statute which stopped registration for fifty days prior to a general election as being inconsistent with Dunn v. Blumstein, 405 U.S. 330 (1972). Persons could register during this period but would not be permitted to vote in the upcoming election. The court held in a per curiam opinion that 50 days was necessary and that plaintiffs had not

demonstrated that it was excessive or unreasonable. The Supreme Court affirmed stating that the record before the district court demonstrated that the 50 days period was administratively necessary for orderly elections but concluded that "the 50-day registration period approaches the outer constitutional limits in this area..." 410 U.S. at 687.

MISCELLANEOUS CONSTITUTIONAL LAW

Griffin Bell's judicial record in the area of general constitutional rights may be characterized as mixed. A review of his decisions follows:

The most well-known example of Griffin Bell's interpretation of the First Amendment is Bond v. Floyd, 251 F. Supp. 333 (N.D. Ga. 1966) (three judge court), rev'd 385 U.S. 116 (1966). Julian Bond was denied his seat in the Georgia House of Representatives for statements made criticizing the United States war effort in Vietnam and admiring the courage of those who resited conscription into that war. In a case of first impression, Judge Bell, for a 2-1 majority, over the dissent of Chief Judge Tuttle, upheld Bond's exclusion from the legislature. The critical passage of Bell's opinion was as follows:

"[Bond's Statment] is a call to action based on race; a call alien to the concept of the pluralistic society which makes this nation. It aligns the organization with '...colored people in such other countries as the Dominican Republic, the Congo, South Africa, Rhodesia...'

"The call to action, and this is what we find to be a rational basis for the deicision which denied Mr. Bond his seat, is that language which states that SNCC supports those men in this country who are unwilling to respond to a military draft." 251 F. Supp. at 344.

The Supreme Court unanimously reversed. In an opinion by Chief Justice Warren the Court held:

"The manifest function of the First Amendment in a representative government requires that legislators be given the widest latitude to express their views on issues of policy... We therefore hold that the disqualification of Bond from membership in the Georgia House because of his statements violated

Bond's right of free expression under the First Amendment." 385 U.S. at 136-137.

Three years later in another First Amendment case, Brooks v. Auburn University, 412 F.2d. 1171 (5th Cir. 1969), Judge Bell for the majority affirmed a district court decision that the president of a university could not prohibit Rev. William Sloane Coffin from speaking on campus when invited by a recognized student organization, but limited his holding to a situation where no university rules governed the president's discretionary determination over invitations.

In Hamer v. Musselwhite, 376 F.2d 479 (5th Cir. 1967), plaintiffs challenged the constitutionality of a city ordinance which, on its face, prohibited all parades and similar demonstrations on the four streets surrounding the local courthouse. Judge Bell viewed the statute in light of its history of enforcement, which he believed demonstrated that the statute was understood to prohibit only parades on the streets themselves, but not on the shoulders and sidewalks. Judge Bell for the majority upheld the statute, so construed, as a reasonable accommodation of First Amendment rights and the police powers of the city.

United States v. Thevis, 484 F.2d 1149 (5th Cir. 1973) was an obscenity prosecution. Judge Bell held for the majority that conviction under federal obscenity law did not require proof that the defendant knew the materials to be legally obscene. Regardless of good faith belief by the defendant that the materials were

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not illegal, conviction could be obtained upon proof only that the defendant was aware of the nature of the materials. Judge Bell also held the statute was not overbroad even though it covered transportation of allegedly obscene materials for personal use, and even though, as Judge Bell acknowledged, use of obscene materials within the privacy of one's own home would be protected activity. In both of the above holdings, Bell reflects the view taken by the majority of the present Supreme Court.

The case also presented the retroactive effect of Miller v. California, 413 U.S. 15 (1973), which in some respects tightens but for the most part broadens the category of materials considered legally obscene. Bell held that defendants charged with conduct which predated Miller were entitled to its benefits but were not to be judged by its stricter standards. Then, in a one-page chart, Judge Bell listed the 12 publications alleged to be obscene and simply answered "yes" or "no" as to whether each publication met the various criteria established for obscenity. No reasons were given. Six of the publications were held to be obscene under the pre-Miller standards. Bell indicated his belief that all 12 publications would be legally obscene under Miller.

In Cooley v. Endictor, 458 F. 2d 513 (5th Cir. 1972), Judge Bell was one member of a panel that decided in a per curiam opinion that Younger v. Harris, 401 U.S. 37 (1971), and more

particularly, Boyle v. Landry, 401 U.S. 77 (1971), prohibited federal court injunctions against threatened state court prosecutions. The decision in Cooley predated by one month the Fifth Circuit's initial decision in Becker v. Thompson, 459 F.2d 919, rehearing and rehearing en banc denied 463 F.2d 1338 (5th Cir. 1972), which discussed at length the availability of declaratory relief where there was a threatened prosecution but no ongoing state criminal proceeding. Becker, a two-to-one decision, was reversed sub nom., Steffel v. Thompson, 415 U.S. 452 (1974) which made it clear that the February sextet of Younger v. Harris did not apply where there was no ongoing criminal prosecution. The Cooley decision sought to extend Younger in a summary affirmance without a full discussion of the issues.

Morgan v. Wofford, 472 F.2d 822 (5th Cir. 1973) was a challenge by a state parolee alleging that he was required to pay restitution without a hearing on the amount due. The majority reversed the dismissal, but Bell pointed out that "[i]n formulating relief the district court should consider whether the questions presented are so analogous to habeas corpus relief as to require exhaustion of state remedies." 472 F.2d at 829.

Lane v. Correll, 434 F.2d 598 (5th Cir. 1970), involved the constitutionality of a city ordinance which required all persons including paupers to pay a \$15 fee for citizen initiation of an arrest warrant. Reversing the district court's dismissal of the complaint, Judge Bell (with Ainsworth and Godbold)

applied the equal protection teachings of Griffin v. Illinois, 351 U.S. 12 (1956) and held that the complaint had stated a cause of action "upon which relief might have been granted. Whether relief should be granted is quite another matter...." 434 F.2d at 599-600.

In Shaw v. Hospital Authority of Cobb County, 507 F.2d 625 (5th Cir. 1975), podiatrists as a class were denied staff membership at a public hospital. Judge Bell for the majority rejected an equal protection challenge which would have resolved the controversy on the merits by declaring the classification without rational basis. Instead, he held that plaintiff had been deprived of a protected liberty interest - the right to practice his profession - without adequate procedural due process. In a concurring opinion, Chief Judge Brown expressed doubts as to the wisdom of remanding the case for further administrative hearings when the only remaining issue would be the substantive validity of the classification which, he believed, could not withstand constitutional scrutiny.

In another equal protection case, Parker v. Sec'y of Dept. of H.E.W., 453 F.2d 850 (5th Cir. 1972), Judge Bell for the majority upheld a provision of the federal social security law denying payments to an otherwise entitled child if the child is "illegitimate". Judge Bell believed that such classification serves the rational purpose "of strengthening and preserving family ties...." 453 F. 2d at 851. Substantial Supreme Court

decisions have rejected similar arguments in defense of other statutes which discriminate on the basis of illegitimacy. See e.g., Weber v. Aetna Casualty & Surety Co., 406 U.S. 164 (1972) (workmen's compensation); New Jersey Welfare Rights Org. v. Cahill, 411 U.S. 619 (1973) (state welfare provision).

Cooper v. Nix, 496 F.2d 1285 (5th Cir. 1974) is an opinion which provided unusual relief. The suit was a challenge brought by 21 and 22 year old students challenging a state university rule. The rule required all unmarried full-time undergraduate students, regardless of age, to live in on-campus residence halls where space was available. The complaint was that the university granted exemptions to persons 23 years of age and older but not to persons in plaintiffs' class. The district court held the exemption denied equal protection to persons in the age groups of 21 and 22, and enjoined the requirement that these students live on campus. Judge Bell ruled that the exemption should not apply to anyone - all students, including those 23 years of age and older, would be required to live on campus.

The Fifth Circuit has had considerable opportunity to discuss the subject of personal privacy as reflected in choice of hair style by public school students. Judge Bell's decisions have supported seemingly inconsistent results except in one respect - an express displeasure that such issues were presented for judicial resolution.

In his first case on this subject, Griffin v. Tatum, 425 F.2d 201 (5th Cir. 1970), Judge Bell considered the claim of a student

who was suspended for wearing hair that was "blocked" in the back rather than tapered as required by school regulations prohibiting "Beatle" haircuts. Bell cautiously treated the school regulation as applied, reversing the district judge's holding that the regulation was facially invalid.

In Stevenson v. Bd. of Education of Wheeler County, 426 F.2d 1154 (5th Cir. 1970), Judge Bell upheld the suspension from school of students who refused to shave. He further indicated that in subsequent cases of this type, exhaustion of administrative remedies might be required notwithstanding the Supreme Court's consistent refusal to require exhaustion in cases brought under 42 U.S.C. §1983.

Judge Bell's desire to remove such cases from the federal judiciary is even more apparent in Karr v. Schmidt, 460 F.2d 609 (5th Cir. 1972), where a closely divided en banc court upheld a high school regulation of hair length for male students. Without amplification, Judge Bell concurred on the ground that the case did not present "a substantial federal question", 460 F.2d at 618, while stating that plaintiff had failed to show that the regulation was arbitrary or without rational basis.

In Lansdale v. Tyler Jr. College, 470 F.2d 659 (5th Cir. 1972), the court en banc determined that a college could not enforce a hair style regulation identical in all critical respects to that upheld in Karr for high school students. Bell concurred but again intimated his disapproval of the scope of section 1983 jurisdiction

that allowed such a question to be raised in court, suggesting that exhaustion of remedies should be a necessary prerequisite to judicial relief.

Gates v. Collier, 489 F.2d 298 (5th Cir. 1973) was a case involving challenges under 42 U.S.C. §1983 to the conditions, operation and administration of the Mississippi prison system. The district court granted broad relief on all counts and in addition granted attorneys fees. The Fifth Circuit panel in an opinion by Tuttle affirmed, stating that the Eleventh Amendment did not bar such an award and that the funds could come from the budget allocated to the Department of Correction by the state legislature.

Thereafter, the Supreme Court decided Edelman v. Jordan, 415 U.S. 651 (1974), and Alyeska Pipeline Service Co. v. The Wilderness Society, 421 U.S. 240 (1975), which together barred an award of attorneys fees against state officials except in cases where they acted in bad faith. Gates was reheard en banc, Gates v. Collier, 522 F.2d 81 (5th Cir. 1975). In a per curiam opinion, with Bell in the majority, the Fifth Circuit vacated and remanded the attorneys fees decision to the district court for reconsideration in light of Alyeska and Edelman. Six judges dissented, arguing that the record showed bad faith by the defendants in pursuing the protracted Gates litigation, and that the district court had made findings "that defendants' actions were unreasonable and obdurately obstinate." 522 F.2d at 82.

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In Lane v. Correll, 434 F.2d 598 (5th Cir. 1970), Judge Bell wrote for a panel that struck down a Florida filing fee for issuance of an arrest warrant on the ground that it impermissibly discriminated against indigents by denying them access to the criminal justice system.

In Georgia Conference of AAUP v. Board of Regents, 246 F. Supp. 553 (N.D. Ga. 1965), Judge Bell for a three judge district court held invalid two Georgia statutes that required teachers in public schools and colleges take oaths (1) that they would refrain from subscribing to or teaching any theory of government "inconsistent with the fundamental principles of patriotism and high ideals of Americanism", and (2) that they have "no sympathy for the doctrines of Communism".

In Sims v. Fox, 505 F.2d 857 (5th Cir. 1974), a majority of the court in a 9-6 decision affirmed a district court decision that dismissed the complaint of a reserve Air Force officer who had been discharged from the Air Force without a hearing. The officer had pleaded nolo contendere to a charge of indecent exposure. Judge Bell joined Judge Tuttle's dissent that rejected the majority's ground that the officer had no "property right" in continued employment and maintained the officer was entitled to a due process hearing.

In Dilworth v. Riner, 343 F.2d 226 (5th Cir. 1965), Judge Bell's opinion for the panel held that a district court had power under the Civil Rights Act of 1964 to issue a temporary restraining

order enjoining the prosecution of blacks in state court for breach of the peace resulting from peaceful attempts to assert a right to service in a restaurant covered by Title II of the Act.

PRISONERS' RIGHTS

Griffin Bell participated in at least three cases involving the civil rights of prisoners. In each case he upheld the prisoners' claims that their rights were denied.

In United States v. McCullough, 405 F.2d 722 (5th Cir. 1969), the issue was whether several maximum sentences running concurrently were to be treated as a maximum sentence for the purpose of crediting a prisoner with time spent in jail prior to sentencing under 18 U.S.C. §3568. (The practice at the time was that a prisoner was not entitled to jailtime credit unless he has received the maximum sentence provided by law.)

The government had contended that the prisoners were not entitled to the credit for time spent in jail prior to sentence because, although they had received the maximum sentence on each of their convictions, the several sentences of each prisoner were imposed to run concurrently with each other, rather than consecutively. Therefore, the government took the position that the prisoners had not received the maximum sentence because the sentencing judge could have imposed the sentences to be served consecutively.

In a case of first impression in the Fifth Circuit, Bell rejected this view, holding that the prisoner had received the maximum sentence on each count and therefore had received the maximum sentence.

In another case, Taylor v. Blackwell, 418 F. 2d 199 (5th

Cir. 1969), a prisoner filed a pro se complaint alleging that his good time had been forfeited illegally. The district court dismissed the action without requiring defendants to show cause. Bell reversed the district court's dismissal on the ground that the allegations in the complaint "were such as to at least require an order to show cause." 418 F.2d at 200. Bell stated that the district court should make its determination "in light of the standard which is applicable to prisoner discipline cases, i.e., whether there existed arbitrariness or an abuse of discretion on the part of prison officials in their decision...ordering forfeiture of petitioner's good time." 418 F.2d at 200-201 [citation omitted]. This was the standard to be applied at the time, and Bell followed well-established precedent.

In Thompson v. United States, 492 F.2d 1082 (5th Cir. 1974), a prisoner had brought an action to recover back compensation for injuries sustained during the course of his employment in federal prison industries. The district court granted the government's motion to dismiss.

Bell reversed, holding that a regulation barring the processing of claims for accident compensation until 30 days prior to the disabled prisoner's release did not bar the prisoner from obtaining partial compensation. Bell characterized the regulation as arbitrary and capricious. He also construed the prisoner's complaint more liberally than the district court since the district court never reached the question of partial compensation.

CRIMINAL LAW

An analysis of Griffin Bell's decisions in the field of criminal law is limited by the generally short and conclusory nature of many of his opinions. Perhaps this is the inevitable result of being presented time and again with claims seemingly lacking in merit by counsel appointed to fulfill the accused's statutory right of appeal. In any event, the reader is often left without a feasible way to determine the reasons behind the result that has been reached. An unusual example of this is United States v. Thevis, 484 F.2d 1149 (5th Cir. 1973), where Judge Bell merely listed the 12 publications alleged to be obscene on a one-page chart and answered "yes" or "no" whether each publication met the listed criteria for obscenity without further elaboration.

Many of Judge Bell's opinions supported the rights of defendants. Nearly as often, they did not. Griffin Bell's opinions generally are an application of established principles of constitutional law to the facts of particular cases. But no tendency to evade the mandate of the Supreme Court is detected; nor is there an indication of a desire to explore unanswered questions or to define more clearly the rights of persons accused of crime.

The summary of cases below does not include cases where no new law was developed, where the questions were primarily factual,

or where the issues turned on statutory construction.

Judge Bell has been the author of two wiretapping opinions. In United States v. Skloroff, 506 F.2d 837 (5th Cir. 1974), Judge Bell for the majority of the panel upheld the constitutionality of Title III of the Omnibus Crime Control and Safe Streets Act of 1968, which authorized the use of electronic surveillance for criminal investigations. Judge Bell cited opinions in other circuits reaching the same result and indicated his belief that the new law was in accord with applicable Supreme Court decisions. The Supreme Court has never explicitly ruled on the constitutionality of this statute.

In United States v. Brown, 484 F.2d 418 (5th Cir. 1973), Judge Bell created new law by sanctioning the use of wiretaps for foreign intelligence without first securing judicial approval through a warrant procedure. He stated:

"[B]ecause of the President's constitutional duty to act for the United States in the field of foreign relations, an inherent power to protect national security in the context of foreign affairs, we reaffirm. . . that the President may constitutionally authorize warrantless wiretaps for the purpose of gathering foreign intelligence." 484 F.2d at 426.

The Supreme Court has yet to resolve this issue, though it has indicated that judicial warrants are required for wiretap investigations related to domestic security. United States v. United States District Court for the E.D. Michigan, 407 U.S. 297 (1972).

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In Lyles v. Beto, 329 F.2d 332 (5th Cir. 1964), which pre-dated the Supreme Court's decision in Miranda v. Arizona, 384 U.S. 486 (1966), the suspect had demanded counsel during post-indictment interrogation by the police. Counsel was denied. This denial was affirmed by Judge Bell, who held that counsel was not required in all such cases, preferring to proceed on a case-by-case "fundamental fairness" approach. The Supreme Court vacated Bell's decision for reconsideration in light of Massiah v. United States, 377 U.S. 201 (1964). See Lyles v. Beto, 377 U.S. 201 (1964). By the time the case was heard on remand, Miranda had been decided, elaborating on the rights of an accused during pre-trial official interrogation and adopting an analysis other than the one employed by Judge Bell. The Court also determined that Miranda was not to be applied retroactively and thus affirmed the conviction. Lyles v. Beto, 363 F.2d 503 (5th Cir. 1966) (per curiam).

Other cases by Judge Bell dealing with Miranda issues do not form a consistent pattern. In United States v. Salimas, 439 F.2d 376 (5th Cir. 1971), the court per Judge Bell held that a defendant subjected to a strip search by customs officials was in "custody" and therefore entitled to be informed of his rights under Miranda. However, in United States v. Robertson, 425 F.2d 1386 (5th Cir. 1970), a person suspected

of having possession of a stolen automobile was not afforded Miranda warning when detained on the street, and the admission of inculpatory statements made by the suspect during such "on the scene" questioning was upheld by Judge Bell. Judge Bell also held in Turner v. United States, 387 F.2d 333 (5th Cir. 1968), that the court must conduct its inquiry as to whether Miranda has been violated outside the presence of the jury and the defendant be given an opportunity to testify.

In Stone v. United States, 357 F.2d 257 (5th Cir. 1966) vacated 390 U.S. 204 (1968), Judge Bell upheld against Fifth Amendment challenge the constitutionality of a tax statute that required the registration of persons intending to engage in illegal gambling activities. The Supreme Court struck down this statute in Marchetti v. United States, 390 U.S. 39 (1968), and vacated the Stone decision.

With the emergence of the Burger Court, Judge Bell's decisions have been more consistent with Supreme Court rulings. In two recent cases, the dissents of Judge Bell have been adopted by the Supreme Court. In United States v. Kasmir, 499 F.2d 444 (5th Cir. 1975), the Fifth Circuit ruled inadmissible financial records seized from the attorney of the taxpayer by the IRS. Bell dissented on the ground that the records in question, which were the work-product of the taxpayer's accountant, would not be protected in the hands of the taxpayer himself and were similarly subject to seizure in the hands of his attorney. The Supreme Court agreed. ___ U.S. ___ 48 L.Ed. 2d 39 (1976).

Similarly, in United States v. Dinitz, 492 F.2d 53 (5th Cir. 1974), the majority of the Fifth Circuit held that when the trial judge improperly declared a mistrial upon motion of the accused, double jeopardy barred retrial where defense counsel had no practicable alternative to requesting such a mistrial. Judge Bell dissented, believing that accused's counsel had precipitated the necessity of aborting the trial. Reviewing the case, the Supreme Court held that, absent culpable judicial misconduct, a motion by the accused for mistrial waives the right to the Fifth Amendment's protection against double jeopardy. The Supreme Court thus reached the same result as Judge Bell, though by different analysis. ___ U.S. ___, 96 S.Ct. 1075 (1976).

In Fisher v. United States, 382 F.2d 31 (5th Cir. 1967), Bell held that the failure of the trial court to hold a hearing as to the voluntariness of a confession required reversal under Jackson v. Denno, 378 U.S. 368 (1964). In Pearson v. United States, 389 F.2d 684 (5th Cir. 1968), Bell held that it was error to deny defense counsel cross-examination into the circumstances of the pre-trial lineup of a witness who also provided in-court identification. In Grant v. United States, 368 F.2d 658 (5th Cir. 1966) Bell held that a trial judge unduly restricted defense cross-examination. In Taylor v. United States, 329 F.2d 384 (5th Cir. 1964) Bell held that it was error to deny defense subpoena of an expert witness to testify as to the defendant's psychiatric condition. In Carter v. United

States, 325 F.2d 697 (5th Cir. 1963), Bell in dissent voiced a somewhat expansive view of the insanity defense.

In Deluna v. United States, 308 F.2d 140 (5th Cir. 1962), the majority held that in a joint trial, comments by the lawyer for one defendant on the failure of the other defendant to take the stand necessitated a new trial, but that such comment was permissible. The proper remedy was severance of the trials. Judge Bell, concurring specially, agreed that a new trial was required on the facts of this case, but would not require new trials in the future because of the inconvenience of separate trials. He would rather prohibit any comment on the accused's silence either by co-defendant's counsel or by the government. Judge Bell dissented from the denial of rehearing. 324 F.2d 375 (5th Cir. 1963).

In addition to the foregoing decisions, Judge Bell wrote numerous other criminal law decisions. U.S. v. Mosley, 496 F.2d 1012 (5th Cir. 1974) (Bell majority opinion), held that the evidence warranted the district court judge's charge to the jury on the issue of entrapment. Brazzel v. Adams, 493 F.2d 489 (5th Cir. 1974) (Bell majority opinion), held that the doctrines of collateral estoppel and official immunity were a bar to a civil rights action seeking damages. U.S. v. Lopez-Ortiz, 492 F.2d 109 (5th Cir. 1974) (Bell majority opinion), held that a search warrant may issue on the basis of an otherwise inadequate tip, if the tip is corroborated to such an extent that it becomes trustworthy; and, that contraband in plain view may

be seized on private property so long as the initial intrusion was legitimate by virtue of a warrant or an exception to the warrant requirement. Simpson v. Simpson, 490 F.2d 803 (5th Cir. 1974) (Bell majority opinion), held that wire interception provisions of the Omnibus Crime Control and Safe Streets Act of 1968 did not apply to an interception by the husband of his wife's conversations in the home. U.S. v. Luton, 486 F.2d 1021 (5th Cir. 1973) (Bell majority opinion), upheld a finding that the defendant was not coerced or intimidated into giving consent to a search of his home. U.S. v. Bean, 484 F.2d 1275 (5th Cir. 1973) (Bell majority opinion), upheld a customs search of a truck on the basis of sufficient evidence of probable cause. U.S. v. Blanton, 479 F.2d 327 (5th Cir. 1973) (Bell majority opinion), upheld a search of a passenger bag by an airline employee. U.S. v. Featherstone, 461 F.2d 1119 (5th Cir. 1972) (Bell majority opinion), rejected a constitutional challenge to a federal statute which prohibits the teaching of another person the use of firearms or explosives with knowledge that such would be used in the furtherance of a civil disorder. U.S. v. DeSimone, 452 F.2d 554 (5th Cir. 1971) (Bell majority opinion), held to be harmless error that the defendant was denied access to the grand jury testimony of a prosecution witness. Cucas v. Texas, 451 F.2d 390 (5th Cir. 1971) (Bell majority opinion), held that any error in admitting an in-court identification without first determining that it was not tainted by an illegal lineup was harmless.

In U.S. v. Donofrio, 450 F.2d 1054 (5th Cir. 1971), Bell in the majority opinion upheld a federal firearms statute against constitutional attack that the statute permitted conviction for possession without a showing that possession was in commerce or affecting commerce. Subsequent to Donofrio, the Supreme Court in U.S. v. Bass, 404 U.S. 336 (1971), took the opposite view and held that the prosecution must prove as an element of the offense that the possession, receipt or transportation was in commerce or affecting commerce.

Hackathorn v. Decker, 438 F.2d 1363 (5th Cir. 1971) (Bell majority opinion), held that where a state trial court did not comply with controlling federal decisions on voluntariness of confession, the defendant was entitled to a post-conviction hearing in state court. Allen v. Henderson, 434 F.2d 60 (5th Cir. 1970) (Bell majority opinion), held that the defendant, who had served approximately five years of a twenty year sentence, whose conviction was reversed, and who received a fifteen year sentence after a new conviction, was entitled to credit for good time on his previously served sentence by virtue of the double jeopardy clause. U.S. v. Perwo, 433 F.2d 1301 (5th Cir. 1970) (Bell majority opinion), held that the defendant, who pleaded guilty, was entitled to a hearing to determine if he had knowledge of the limits of his possible sentence. U.S. v. Robertson, 425 F.2d 1386 (5th Cir. 1970) (Bell majority opinion), held that the police had merely conducted an "on-the-scene" questioning of defendant, and that the defendant thus had not

been entitled to a Miranda warning. Mattox v. Carson, 424 F.2d 202 (5th Cir. 1970) (Bell majority opinion), held that although the Miranda rules apply to grand jury investigations, criminal procedure requires that persons await an indictment and then make their motions to suppress the evidence incident to their prosecution, rather than proceeding by way of pre-trial habeas corpus. U.S. v. Tsai-Kwan-Sang, 416 F.2d 306 (5th Cir. 1969) (Bell majority opinion), reversed a conviction for a hearing to determine if the defendant understood English well enough to comprehend his Miranda rights. Colon v. Hendry, 408 F.2d 864 (5th Cir. 1969) (Bell majority opinion), remanded for a hearing to determine if the state improperly conditioned access to federal habeas corpus by recharging defendant with felony rather than misdemeanor charges. Kiel v. U.S., 406 F.2d 1323 (5th Cir. 1969) (Bell majority opinion), affirmed a conviction on the basis that there was probable cause to support the arrest and the search warrant.

RECUSAL AND DISQUALIFICATION

Judicial recusal and disqualification is an element of due process and a test of judicial fairness.

There are two basic recusal statutes, the second of which was broadly amended in 1974. The first statute, 28 U.S.C. §144, becomes operative upon the filing by a "party" of a "sufficient affidavit that the judge. . . has a personal bias against him or in favor of any adverse party." The second statute, 28 U.S.C. §455, as amended on December 5, 1974, Pub. L. No. 93-512, 88 Stat. 1609, requires automatic disqualification by a judge "in any proceeding in which his impartiality might reasonably be questioned," and in a number of enumerated circumstances. This statute, 28 U.S.C. §344, prior to the 1974 amendment, required automatic disqualification by a judge "in any case in which he has a substantial interest... or is so related or connected with any party or his attorney as to render it improper, in his opinion, for him to sit."

Judge Bell has been involved in a number of recusal cases: several where he reviewed the refusal of district court judges to disqualify themselves; and several concerning his own potential disqualification.

In several instances in which he confronted the issue, Bell decided against recusal/disqualification.

Davis v. Board of School Commissioners of Mobile County, 517 F.2d 1044 (5th Cir. 1975), involved the denial of a recusal motion made by a civil rights plaintiffs' lawyer who alleged

bias against a district judge under §144 and the amended §455 stemming from other court proceedings. Judge Bell affirmed. First, he held that the bias had to be against the party, not the lawyer; and that the bias had to be extra-judicial in nature, not stemming from judicial conduct. Second, he held that the test under the newly amended §455 was the same as under §144, and that both statutes have the same meaning.

Section 144 on its face requires bias against a party. Section 455 on its face is much broader, requiring only a reasonable question about the judge's impartiality in any proceeding. Bell's decision was one of the first under the newly amended §455 and it was restrictive.

Parrish v. Board of Commissioners of Alabama State Bar, 524 F.2d 98 (5th Cir. 1975) (en banc) also involved the construction of §144 and of the newly amended §455. In this case against the Alabama State Bar for racial discrimination, the district judge who had been president of a local segregated bar association refused to recuse himself. The Fifth Circuit affirmed, with Bell writing the en banc majority opinion. Bell reaffirmed that §144 and §455 were to be interpreted in a similar manner, and also held that the facts alleged must be such as to convince a "reasonable man" that bias existed. 524 F.2d at 103. The dissenters argued that this reasonable man standard was more stringent than §455 required, and that the proper test would require disqualification where "a reasonable person standing in

the same relationship as does the affiant [would] believe that the challenged judge" is biased. 524 F.2d at 108.

In his majority opinion Bell stated: "There is hardly any judge in this circuit who was not a member of a segregated bar association at one time, and many have held a high office in the bar associations." 524 F.2d at 103. The dissent took the position that such judges should be disqualified in cases challenging bar association discrimination - under the language of §455 requiring disqualification where a judge's "impartiality might reasonably be questioned."

A final recusal case is Bell's Response and Order filed on September 21, 1973 in the Atlanta metropolitan school . desegregation case styled Armour v. Nix, Civ. No. 16708 (N.D. Ga. 1972) (three-judge court). Since the Response and Order is unpublished, we set forth the record at some length.

Subsequent to the filing of the Atlanta-metro cases in June of 1972, and of the granting shortly thereafter of defendants' motion to convene a three-judge court and to consolidate the metro case with the Atlanta-only case (Calhoun v. Latimer, supra, Chapter 1). Judge Bell, while a member of the three-judge court, attended an October, 1972 meeting of the Atlanta Action forum, a private bi-racial group of Atlanta leaders gathered to discuss the Fifth Circuit order directing Atlanta to develop a school desegregation plan. The group is made up of corporate presidents and political and community leaders. Among the participants were the

president of the Atlanta NAACP, a plaintiff in the Atlanta-only school case, and two members of the Atlanta School Board, who were defendants both in the Atlanta-only case and in the Atlanta-metro cases. Slip Opinion at 9. The defendant school board members were guests; they proposed alternate ways of meeting the Fifth Circuit order directing development of a desegregation plan. One proposal was for the Atlanta "school board [to] join the position of plaintiffs in the two metro cases." Id. at 12. Judge Bell replied that the order of the Fifth Circuit in the Atlanta-only case had to be carried out without delay. Id. When asked about the Metro case, Judge Bell stated "that the metro case was an entirely different case and that there might be considerable delay in resolving it." Id. at 13. According to Judge Bell: "The meeting ended on the note that the parties would begin to negotiate, and initially without lawyers, in an effort to finally resolve" the Atlanta-only case. Id. at 13-14. Thereafter, as predicted by Judge Bell, "on November 17, 1972 [the Atlanta-metro case three-judge court, of which Bell was a member] entered a formal stay of all proceedings in the matter pending the decisions of the Supreme Court in the Richmond and Detroit Metro School cases, and the Denver school case." Id. at 7.

Subsequently, negotiations proceeded without the participation of lawyers and, later, with counsel representing some of the plaintiffs. A controversy over which group of attorneys actually represented the class caused the Fifth Circuit to

remand the case for further proceedings. The Atlanta school board did not join as plaintiffs in the Atlanta-metro case. When Judge Bell's role in the settlement became known, counsel for the black children plaintiffs in the Atlanta-metro case moved to recuse Judge Bell on the ground that his extra-judicial actions suggested at least the appearance of impropriety under the Code of Judicial Ethics. He denied the motion. He held that under §144 the allegation of bias must be made by a party, not by an attorney. As to then-unamended §455, which required automatic disqualification in any case in which a judge "has a substantial interest... or is so related or connected with any party or his attorney as to render it improper, in his opinion, for him to sit," Bell ruled that in his opinion his extra-judicial actions in the Atlanta-only case did not make it improper for him to sit on the three-judge panel in the Atlanta-metro case.

Although Judge Bell's Response and Order in the Atlanta-metro case cannot be said to be contrary to the statutes, his refusal to disqualify himself after his extra-judicial advocacy of the settlement strategy is open to question.

GEORGIA LAWS 1959 SESSION

GOVERNOR'S COMMISSION ON CONSTITUTIONAL GOVERNMENT

No. 2 (House Bill No. 4).

An Act to create a Commission known as the Governor's Commission on Constitutional Government, to provide its powers and duties, to provide funds for its operation, to repeal conflicting laws, and for other purposes.

Be it enacted by the General Assembly of Georgia :

Section 1. There is hereby created a Commission to be known as "The Governor's Commission on Constitutional Government."

Section 2. The Commission shall formulate plans of legislation, prepare drafts of suggested laws, and recommend courses of action for consideration by the General Assembly of Georgia and the legislative bodies of other states and the Congress of the United States to provide for the clear delineation between the general sovereignty of the states and the limited sovereignty of the Federal Government, as historically provided for in the Constitution of the United States and the Constitution of the State of Georgia, and to provide for the prevention of encroachment by the Federal Government on the functions, powers, and rights of the State of Georgia and other states of the United States.

Section 3. The Commission shall be composed of the Governor, Lieutenant Governor, Speaker of the House of Representatives, the Attorney General, Chairman of the Judicial Council, President of the Georgia Bar Association, and 15 other citizens to be appointed by the Governor, representative of the State both geographically and in all segments of her economy.

Section 4. The Governor shall be chairman of said Commission. Said Commission shall perfect its organization conformable to the provisions of this Act and may appoint subcommittees.

Section 5. The Commission is authorized to cause its findings, proposed plan or plans of legislation, accompanying drafts of suggested laws, or other courses of action, and its comments thereon, to be printed and distributed to the members of the General Assembly of Georgia, or the legislative body of other states, or to the Congress of the United States, or to the public, when in their discretion it is deemed appropriate.

Section 6. The Chairman is authorized to assign quarters and to employ such help, technical assistants, and legal counsel, to aid the Commission in the performance of its duties as he may deem proper, and to fix their compensation. The funds for the operation of the Commission shall be made available by the Bureau of the Budget from funds appropriated for the operation of the Executive Department.

Section 7. All laws, or parts of laws, in conflict with the provisions of this Act are hereby repealed.

Approved February 3, 1959.

REVENUE—TAX CREDIT FOR CONTRIBUTIONS

Code § 92-3111 (a) Enacted

No. 3 (House Bill No. 15)

An Act to amend chapter 31 of title 92 of the Georgia Code of 1933 as heretofore amended; to provide for a credit against or deduction from the income tax otherwise payable under said chapter 31 of title 92 of said code as amended of the amount of any contribution made by the taxpayer during the taxable year to any corporation, foundation or trust which, at the time of such contribution, has a certificate from the State Revenue Commissioner that

it is organized and operated exclusively for educational purposes and that no part of its net income inures to the benefit of any private shareholder or individual; and for other purposes

Be it enacted by the General Assembly of Georgia and it is hereby enacted by authority of the same :

Section 1. That chapter 31 of title 92 of the Georgia Code of 1933 as amended be and the same is hereby further amended by adding after section 92-3111 thereof a new section 92-3111(a) to read as follows :

92-3111(a) Credit against tax for contribution to educational organizations. There shall be allowed as credit against, and deducted from the tax otherwise payable under this chapter by any taxpayer an amount equal to any contribution which such taxpayer shall have paid, during the taxable year on account of which such tax is payable, to any corporation, foundation or trust if, but only if, at the time of such payment such corporation, foundation or trust has in full force and effect a certificate from the State Revenue Commissioner certifying under this section that such corporation, foundation or trust is organized and operated exclusively for educational purposes and that no part of the net income of said corporation, foundation or trust inures to the benefit of any private shareholder or other individual. The issuance of such certificate shall be at the discretion of the State Revenue Commissioner. The existence of such certificate from the State Revenue Commissioner is a condition precedent to the credit allowed by this section 92-3111(a) and no such credit shall be allowed unless the corporation, foundation or trust to which such contribution is paid holds such certificate in full force and effect at the time such payment is made. If a credit is allowed under this section, no deduction shall be allowed under section 92-3109 as amended for the same payment.

Section 2. That all laws and parts of laws in conflict herewith are hereby repealed.

Approved February 3, 1959.

CLOSING OF PUBLIC SCHOOLS AUTHORIZED

No. 7 (Senate Bil No. 1).

An Act to implement the power of the Governor as conservator of the peace throughout the State; to define such powers with respect to the operation of public schools; to prevent violence and disorder in connection with the operation of public schools; to provide for the closing of public schools and for the education of pupils from such school; to confer power upon the Governor with respect to such schools; and for other purposes.

Be it enacted by the General Assembly of Georgia :

Section 1. Whenever the Governor shall determine, from such facts as he may find to exist, of the sufficiency of which he shall be the sole judge, that the continued operation of any public school in any county, city or independent school district is likely to result in or cause violence or public disorder in the community in which such school is situated, or that it is necessary to preserve the good order, peace and dignity of the State, or any subdivision thereof, that any such school be closed, he shall make public proclamation of such findings, and such school shall thereupon be closed.

Section 2. If the Governor shall determine from such facts as he may find to exist, of the sufficiency of which he shall be the sole judge, that the closing of any public school, as authorized by section 1 of this Act, has become necessary because of such conditions resulting from the transfer or assignment of one or more pupils to such school, and that the continued operation of the school therefore attended by any pupil so assigned or transferred, or to which any such pupil should or would have been assigned in the normal operation of the public schools in the county, city or independent school district of which such school is a part, is likely to result in or cause violence or public disorder in the community in which such school is situated, or disturb the good order, peace and dignity of the State or any subdivision thereof, the Governor shall make public proclamation of such findings and such school formerly attended by and such pupil so transferred or assigned, or to which any such pupil should or would have been assigned in the normal operation of the system, shall likewise be closed.

Section 3. After the issuance of such a proclamation by the Governor under either of the foregoing sections, it shall be unlawful for the public authorities of any such county, city or independent school district to operate any school to which such proclamation relates, and it shall be unlawful for any State, county or municipal officer or official, or any person occupying a position of public employment as a school teacher or otherwise, to participate in the operation of any such school as a public school; and the expenditure of public funds of the State, any county or any city or municipal corporation or other political subdivision for the operation of any such school shall also be unlawful.

Section 4. Whenever any public school is closed pursuant to this Act, the Governor shall, by executive order or proclamation, provide for the protection and preservation of the property occupied by such school, including the buildings thereon.

Section 5. Whenever any school is ordered by the Governor, pursuant to the foregoing provisions of this Act, to be closed, the public authorities of the county, city or independent school district shall arrange for the transfer of the pupils assigned to any such school to other public schools.

Section 6. If the public authorities of any county, city or independent school district in which is situated any public school closed pursuant to the provisions of this Act, because of the lack of physical or other facilities or for other reasons, cannot transfer the pupils attending or assigned to any such closed schools to other schools in the system operated by such county, city or independent school district, they shall so certify to the Governor and shall set forth in the certification the names of the pupils who cannot be transferred to other schools in the system and the facts relating thereto. If the Governor shall approve the findings of the public authorities of any such county, city or independent school district, he shall provide for an educational grant from State and local funds, as authorized by the Act approved February 6, 1956 (Ga. L. 1956, p. 6) to each such pupil who cannot be so transferred or assigned to an existing public school. Such grant shall be payable in such amount and under such regulations as the order of the Governor may provide, and shall be for the education of each such child or pupil in such schools other than public schools as such child or pupil may attend.

Section 7. The powers conferred upon the Governor by this Act shall be cumulative of those conferred upon him by the aforesaid Act of February 6, 1956.

Section 8. Any person who shall violate any provision of this Act, and any person who shall continue to operate, or who shall attempt to operate, as a public school, any school closed under this act or shall attend, or cause any one else to attend, any such closed school, or attempt so to do, shall be guilty of a misdemeanor, and on conviction shall be punished as provided by section 27-2506 of the Code of Georgia of 1933.

Section 9. All laws and parts of laws in conflict with this Act are hereby repealed.

Approved February 3, 1959.

CLOSING OF SCHOOLS, ETC. UNDER CONTROL OF BOARD OF REGENTS AUTHORIZED.

No. 8 (Senate Bill No. 2).

An Act to imlement the powers of the Governor as conservator of the peace and to authorize the Governor to close any school or institution or any branch or department thereof under the control of the Board of Regents of the University system of Georgia; and for other purposes.

Be it enacted by the General Assembly of Georgia:

Section 1. The Governor as the conservator of the peace shall have the authority to close any school or institution, or any branch or department thereof under the control of the Board of Regents of the University System of Georgia, whenever he shall find, of which he shall be the sole judge, that the continued operation of any such school or institution or any branch or department thereof, is likely to result in or cause violence or public disorder in the community in which such school is situated, or that it is necessary to preserve the good order, peace and dignity of the State, or any subdivision thereof.

Section 2. All laws and parts of laws in conflict with this Act are hereby repealed.

Approved February 3, 1959.

COUNSEL TO REPRESENT PUBLIC OFFICIALS

No. 9 (Senate Bill No. 4)

An Act to provide for the conduct of certain actions; to provide for the designation of counsel in certain action; to provide for notification of the pendency of such actions; to provide for the payment of expenses; and for other purposes.

Be it enacted by the General Assembly of Georgia, and it is hereby enacted by authority of the same:

Section 1. When any action is filed in any court of this State, or in any Federal Court, against a public officer, public official, board or bureau, or any of its members, created by the laws of this State, which seeks relief, legal or equitable, against such public officer, public official, board or bureau, or any of its members, in the administration of his or its duties, and where the State, through any of its agencies, appropriates or allocates moneys to such public official (or their offices), board or bureau which is used in the administration of his or its functions, and this shall include county registrars, and where no regular counsel is provided for such public officer, public official, board or bureau, including county registrars, by the Attorney General of this State, the Governor of the State shall be immediately notified by such public officer, public official, board or bureau, including county registrars, or its member or members, and he may designate legal counsel in such case for such public officer, public official, board or bureau, or its members.

Section 2. Whenever, in any such action as specified in section 1 of this Act, the Governor shall designate counsel as therein provided, any fees or expenses paid to or on account of such counsel and such court costs as are incurred shall be paid by the State.

Section 3. The provisions of this Act shall be applicable to pending suits and the provisions hereof shall be complied with within ten days following approval of this Act.

Section 4. In the event any portion, or portions, of this Act shall be held unconstitutional for any reason, the remaining portion, or portions, shall remain in full force and effect.

Section 5. All laws and parts of laws in conflict with this Act are hereby repealed.

Approved February 3, 1959.

QUALIFICATIONS FOR ADMISSION TO UNIVERSITY SYSTEM

No. 10 (Senate Bill No. 3)

An Act to govern the admission of students to the University of Georgia and all of its branches as to age; to declare exceptions thereto; to repeal conflicting laws; and for other purposes.

Be it enacted by the General Assembly of Georgia:

Section 1. No person shall be admitted initially to any college or undergraduate school of the University of Georgia or any of its branches after such person has reached twenty-one (21) years of age, and no person shall be admitted initially to any graduate or professional school of the University of Georgia or any of its branches after such person has reached twenty-five (25) years of age: Provided, however, that any person engaged in teaching or instructing in any elementary or high school in this state, public or private, and who desires to pursue courses of study to better qualify himself therefor, may be admitted to any college, undergraduate, graduate, or professional school of the University of Georgia or any of its branches, notwithstanding his age, subject, however to such limitations or regulations as the Board of Regents may prescribe. Provided, further, that persons who may be found by the Board of Regents to possess such ability and fitness, so that their further education at public expense is justified, may be admitted to any such undergraduate, graduate or professional school notwithstanding such age limitation. Provided, further, that persons who have been prohibited from making application for admission to college before reaching the age of twenty-one (21) or twenty-five (25), respectively, because of military service in the Armed Forces of the United States, shall not be denied admission because of age.

Section 2. The Board of Regents shall provide by regulation for the enforcement and administration of this Act.

Section 3. All laws and parts of laws in conflict with this Act are hereby repealed.

Approved February 4, 1959.

TAXATION BY MUNICIPAL CORPORATIONS TO SUPPORT INDEPENDENT SCHOOL SYSTEMS

No. 212 (House Bill No. 5)

An Act to provide for the support of independent school systems which municipal corporations are authorized by the Constitution to maintain; to authorize ad valorem taxation for the support of such school systems; to limit the purposes for which the power of taxation may be exercised in the support of such independent school systems; and for other purposes.

Be it enacted by the General Assembly of Georgia:

Section 1. Every municipal corporation having an independent school system which it is permitted by Article VIII, Section VII, Paragraph I, of the Constitution of Georgia to maintain, including any municipal corporation having a public school system established prior to the adoption of the Constitution of 1877, is hereby authorized to levy ad valorem taxes for the support of separate public schools for the white and colored races, not less than five mills nor more than twenty mills upon the dollar of all taxable property within the limits of such municipal corporation, or at such rate, and with such limitations as to rate, as may heretofore have been fixed by law or constitutional provisions. Such taxes shall be levied by the governing authority of such municipal corporation at such rate as may be determined by such governing authority of such municipal corporations within the limitations set out above upon the recommendation of the board of education of such municipal corporation or other authority charged with the duty of operating such independent school system, and collected as other municipal taxes are collected.

Section 2. The authority hereby conferred upon municipal corporations to levy taxes may be exercised only for the purpose of levying such taxes for the support of separate public schools for the white and colored races, and if it shall be held by any court of competent jurisdiction that the support of separate public schools for the white and colored races is illegal or violative of the constitutional rights of any person, or if it shall be finally determined by a court of competent jurisdiction that any such municipal corporation cannot maintain separate schools for the white and colored races, then all power conferred upon any such municipal corporation by this Act shall immediately terminate and cease to be effective and no such municipal corporation shall thereafter have power or authority to levy any tax ad valorem or otherwise, for the support and maintenance of public schools; and the Superior Court of the County shall have jurisdiction to enjoin any attempt to exercise any such power at the suit of any taxpayer of the municipality; provided, however, that the closing of any public school within such municipality by authority of State law shall not prevent the exercise of the power of taxation conferred by this Act for the support of public schools thereafter continued in operation as separate public schools for the white and colored races.

Section 3. This Act shall supersede all existing general local laws authorizing municipal corporations to levy taxes for the support of independent school systems permitted by Article VIII, Section VII, Paragraph I, of the Constitution, including local or general laws authorizing municipal corporations to levy taxes for the support of public school systems established prior to the adoption of the Constitution of 1877, but the provisions of such existing general and local laws fixing rates of ad valorem taxation for the support of public schools by such municipal corporations shall be deemed to be incorporated into this Act insofar as, and only insofar as, such existing general and local laws prescribed rates of ad valorem taxation.

Section 4. All general and special laws and parts of laws in conflict with this Act are hereby repealed. Should sections one and two of this Act, or either of them, be declared invalid, the provisions of section three, and the repealing provision of this section, shall remain of full force and effect.

Approved March 10, 1959.

EACH PUBLIC SCHOOL PRINCIPAL TO BE BONDED

No. 213 (House Bill No. 32)

An Act to provide for the execution of a bond by school principals conditioned upon the true accounting of all funds and property coming into such principals' custody, control, care or possession; to provide for the forms or books in which such accounts shall be kept; to provide for inspection of said accounts by the local boards of education; to provide for a quarterly report to the local board; to incorporate the provisions of Code Chapter 89-4; to provide for exceptions; to repeal conflicting laws; and for other purposes.

Be it enacted by the General Assembly of Georgia :

Section 1. Any person now employed as principal and any person upon entering into employment as principal of any public school of this State shall execute a bond in an amount fixed by the local board of education having jurisdiction over such school. Said bond shall be made payable to such local board of education and shall be conditioned upon faithful and true accounting for all public and other funds and all property coming into such principal's custody, control, care or possession. The premiums of such bonds shall be paid by the local board of education out of the county educational fund.

Section 2. The State Department of Education shall prepare forms or books, or both, in which shall be kept the accounting of the funds and property by said principals as herein provided for. Such forms or books, or both, shall be distributed, free of charge, by the Department of Education to each local school board in this State and in a sufficient quantity as will satisfy the needs of that particular system.

Section 3. The principal of each public school shall make a quarterly report to the local board of education immediately upon the end of each quarter of the fiscal year and said report shall contain an account of all receipts and expenditures of such funds during the past quarter and a complete property inventory. The local board of education may at this time or at any time during the school year demand to inspect all books, records and accounts of such funds and property. The principal of each public school shall keep his books, records and accounts in good auditable order at all times and shall make them available to the local board of education.

Section 4. All bonds executed under the authority of this Act shall be subject to and governed by all the provisions of Code Chapter 89-4, relating to official bonds, which are not in conflict herewith.

Section 5. This Act shall not apply to public school systems established prior to the adoption of the Constitution of 1877.

Section 6. All laws and parts of laws in conflict with this Act are hereby repealed.

Approved March 10, 1959.

THE SIBLEY REPORT 1960

GEORGIA GENERAL ASSEMBLY COMMITTEE ON SCHOOLS

The committee on schools of the General Assembly of Georgia conducted extensive hearings on the possibility of desegregation of schools, testimony being heard from more than 1,800 witnesses. Subsequently, a majority issued a report recommending that the general assembly propose constitutional amendments which would: (1) forbid compelling the attendance of a child at an integrated school against the will of his parent and provide for reassignment to another school or a tuition grant in such case, and (2) provide for a uniform system of local units for the administration of the schools, and authorize such local units to open or close schools in accordance with the wishes of a majority of the qualified voters. Legislation recommended included: (1) plans for tuition grants for students withdrawing from integrated schools; (2) an extension of the teacher retirement system to private schools; (3) a decision by the legislature as to whether to close all schools in a crisis or attempt to operate the schools and maintain as much freedom of choice as possible for parents. If the latter course is chosen, the committee recommended that a plan be enacted for local school placement and school closing. Other members of the committee filed a minority report. Both of these reports, as well as a statement by one other committee member, are reproduced below.

REPORT OF MAJORITY

I. THE BACKGROUND

In the 1896 case of *Plessy v. Ferguson*, 163 U.S. 537 (1896), the U.S. Supreme Court held that "separate but equal" facilities met the requirements of the Fourteenth Amendment that no state should deprive its citizens of the "equal protection of the laws." At least eight subsequent Supreme Court decisions and more than 70 lower federal and state court cases followed that doctrine. In reliance on that doctrine, many billions of dollars have been spent to make the separate schools for Negroes truly equal in all respects to those provided for white children.

At one time or another, after the adoption of the amendment, 23 states maintained segregated schools by law, including New York, Illinois, California, and Kansas among other non-Southern states.

In 1954, with no change in the Constitution and no congressional legislation, the Supreme Court held that separate schools, regardless of the quality of their facilities, personnel and program, are inherently unequal and therefore unconstitutional. *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).

We consider this decision utterly unsound on the facts; contrary to the clear intent of the Fourteenth Amendment; a usurpation of legislative function through judicial process; and an invasion of the reserved rights of states. We further consider that, putting aside the question of segregation, this decision presents a clear and present danger to our system of constitutional government, because it places what the court calls "modern authority" in sociology and psychology above the ancient authority of the law, and because it places the transitory views of the Supreme Court above the legislative power of Congress, the settled construction of the Constitution, and the reserved sovereignty of the several states.

Nevertheless, we must recognize that the decision exists; that it is binding on the lower federal courts; and that it will be enforced.

II. GENERAL ASSEMBLY COMMITTEE ON SCHOOLS

Because of a pending suit in a federal court to bring about the integration of the races in the Atlanta school system, the General Assembly of Georgia at its 1960 session expressed the belief "that the people of Georgia may wish to make

a deliberate determination as to whether future education is to be afforded through direct tuition payments for use in private schools devoid of governmental control, or whether the public school system as it presently exists shall be maintained notwithstanding that the school system of Atlanta and even others yet to come may be integrated. . ."

In order that the General Assembly might be in a better position to "make a determination as to the wisdom of presenting this question to the people," the Assembly felt that it should have "the advice and counsel of the people, not only as to the desirability of the presentation, but also as to its form and content."

As a means of obtaining expressions of opinion from the people, the General Assembly created the General Assembly Committee on Schools consisting of nineteen members. This Committee was directed, immediately upon the adjournment of the General Assembly, to conduct at least one public hearing in each congressional district of the State.

The Committee was directed to make positive recommendations to the General Assembly "regarding whether or not to submit the question to the people of Georgia for their determination," and in the event the Committee should recommend the submission of the question to the people, the Committee was asked to recommend "the time, manner and form of the submission, including its contents." The Committee was also directed to "make such other and further recommendations as it may deem meet and proper."

The Committee held the hearings as directed. It received testimony from more than 1,800 witnesses, representing or purporting to represent more than 115,000 people. Among these witnesses were more than 1,600 white persons and 200 Negroes. In addition, the Committee has received over 600 letters from individuals and petitions bearing more than 6,000 signatures. A three to two majority of the witnesses favored maintaining segregation even at the cost of abolishing public schools.

The hearings disclosed a nearly unanimous feeling on basic principles regarding segregation and public schools, but a wide difference of opinion on the course of action that should be taken to meet the situation created by the federal court decision.

The testimony cannot be accurately assessed as to the mathematical proportion of the people of Georgia holding particular opinions, because of the defects inherent in the only procedures that the committee could adopt and because of the comparatively small number of the people who could be heard. For example, 40 per cent of the counties were represented by three or fewer witnesses. Nevertheless, the committee has been able to reach these conclusions, based on the testimony presented to it:

1. An overwhelming majority of people in Georgia have a deep conviction that separate school facilities for the white and colored races are in the best interest of both races, and that compulsory association of the races in the schools through enforced integration will be detrimental to the peace, good order and tranquillity of the state and to the progress, harmony, and good relations between the races. With this opinion your committee is in full agreement.

2. The vast majority of the people prefer tax-supported, segregated public schools rather than private schools with or without grants in aid from the state. It is their belief that it is in the public schools that the youth of the state receive training for the responsibilities of citizenship in a democracy; that to close the public schools and go to a system of private schools even with grants in aid would make it more difficult for many young people to obtain an adequate education. The burden would be particularly heavy on those in the lower income brackets. With these views your committee is also in full accord.

3. Testimony received by the committee indicated that if total segregation cannot be maintained in a state-wide system of public schools, there is no unanimity of opinion as to the course that should be followed. Three points of view are expressed:

- (a) A large number of people are willing to close the schools on a state-wide basis, rather than allow any integration anywhere.

- (b) A large number of people desire that the choice between closing the schools and accepting integration be left to the community affected. This viewpoint is predicated on two considerations: First, many people believing that their own school systems will not be confronted with integration problems within the foreseeable future, are unwilling to sacrifice their schools to maintain segregation in other parts of the state; and second, a number of people feel that conditions are

so varied throughout the state that the decisions on local problems should be left to local authorities.

(c) A large number of people, though believing in the desirability of segregation, would be willing to accept some degree of integration rather than to sacrifice their public schools.

III. THE PRESENT LEGAL SITUATION

If a Negro child is ordered into a white Atlanta school, the governor is required under 1955 and 1956 laws (Code 32-801, et. seq.), to close all the schools in the Atlanta system. Expenditures of state or local funds to operate an integrated school system are prohibited and made a felony, and personal civil liability is imposed on those making such expenditures.

Other Georgia laws also prohibit the support of integrated schools by state or local tax funds. Among them are these:

The Georgia Constitution requires that "Separate schools shall be provided for the white and colored races" (Code 2-6401); the 1956 appropriation act (Ga. Laws 1956, p. 753, 758) under which the state is still operating, provides that funds are cut off for school districts ordered desegregated; a 1955 act (Code 32-802) requires that budgets submitted by local school districts to the State Board of Education provide that the funds therein requisitioned will lapse in the event of integration.

If any Atlanta school is closed, no other school district is necessarily affected. However, when the same situation arose in Norfolk, Virginia, parents of white children who had attended the closed schools brought suit and a three-judge federal court held:

"Tested by these principles we arrive at the inescapable conclusion that the Commonwealth of Virginia, having accepted and assumed the responsibility of maintaining and operating public schools, cannot act through one of its officers to close one or more public schools in the state solely by reason of the assignment to, or enrollment or presence in that public school of children of different races or colors, and, at the same time, keep other public schools throughout the state open on a segregated basis. The 'equal protection' afforded to all citizens and taxpayers is lacking in such a situation. While the State of Virginia, directly or indirectly, maintains and operates a school system with the use of public funds, or participates by arrangement or otherwise in the management of such a school system, no one public school or grade in Virginia may be closed to avoid the effect of the law of the land as interpreted by the Supreme Court, while the state permits other public schools or grades to remain open at the expense of the taxpayers."—*James v. Almond*, 170 F.Supp. 331.

The decree based upon this decision ordered that the Norfolk schools be reopened on an integrated basis, and enjoined the state officials from continuing to operate other schools unless the Norfolk schools were likewise open. The decree did not order or contemplate closing all the schools of the state, and the state did not undertake closing the state-wide school system; instead it decided to accept integration in Norfolk and subsequently in other areas.

It must be assumed that a similar suit would be filed by Atlanta parents, and that a similar holding would follow, although the committee cannot undertake to predict the form which the decree effectuating such a holding would take.

In any event, under such a holding the state would be faced with the necessity for deciding whether to close all the schools of the state, by legislation or otherwise, or to accept integration of the Atlanta schools.

IV. FREEDOM OF CHOICE

The Constitution of the United States, as interpreted by the Supreme Court, is controlling and binding upon the courts and the people; and the state laws, insofar as they are in conflict with the federal law, are unenforceable.

Any system of public education must now recognize that the Supreme Court decision in the *Brown* case destroyed the power of the state to compel by law separation of the races in public tax-supported schools. Any continuance of public education must be adjusted to that fact.

It is important, therefore, to determine the scope and limitations of the *Brown* case as interpreted and applied by the federal courts. We quote from the decisions as follows:

"Desegregation does not mean that there must be intermingling of the races in all school districts. It means only that they may not be prevented from intermingling or going to school together because of race or color.

"If it is a fact, as we understand it is, with respect to Buchanan School, that the district is inhabited entirely by colored students, no violation of any constitutional right results because they are compelled to attend the school in the district in which they live." *Brown v. Board of Education of Topeka, Kansas*, 139 F.Supp. 468 (D. C. Kan. 1955). (This was a later decision in the *Brown* case, rendered after the case went back to the District Court for implementation.)

"... having said this, it is important that we point out exactly what the Supreme Court has decided and what it has not decided in this case. It has not decided that the Federal Courts are to take over or regulate the public schools of the states. It has not decided that the states must mix persons of different races in the schools or must require them to attend school or must deprive them of the right of choosing the school they attend. What it has decided, and all that it has decided, is that a state may not deny to any person on account of race the right to attend any school that it maintains. This, under the decision of the Supreme Court, the state may not do directly or indirectly; but if the schools which it maintains are open to children of all races, no violation of the Constitution is involved even though the children of different races voluntarily attend different schools, as they attend different churches. Nothing in the Constitution or in the decision of the Supreme Court takes away from the people freedom to choose the schools they attend. The Constitution in other words, does not require integration. It merely forbids discrimination. It does not forbid such segregation as occurs as the result of voluntary action. It merely forbids the use of governmental power to enforce segregation. The Fourteenth Amendment is a limitation upon the exercise of power by the state or state agencies, not a limitation upon the freedom of individuals." *Briggs v. Elliott*, 132 F.Supp. 776 (D.C.S.C. 1955)

"The Constitution as construed in the School Segregation Cases, *Brown v. Board of Education*—, forbids any state action requiring segregation of children in public schools solely on account of race; it does not however, require actual integration of the races." (Court then quoted from *Briggs* case, quoted hereinabove.) *Avery v. Wichita Falls Independent School District*, 241 F.2d 230 (C.A. 5th 1957), cert. den. 353 U.S. 938.

"It must be remembered that the decisions of the Supreme Court of the United States in *Brown v. Board of Education*—, do not compel the mixing of the different races in the public schools. No general reshuffling of the pupils in any school system has been commanded. The order of that court is simply that no child shall be denied admission to a school on the basis of race or color. Indeed, just so a child is not through any form of compulsion or pressure required to stay in a certain school, or denied transfer to another school, because of his race or color, the school heads may allow the pupil, whether white or Negro, to go to the same school as he would have attended in the absence of the ruling of the Supreme Court. Consequently, compliance with that ruling may well not necessitate such extensive changes in the school system as some anticipate." *Thompson v. School Board of Arlington*, 144 F.Supp. 239 (D. C. Va. 1956), affirmed sub nom. *School Board of Charlottesville v. Allen*, 240 F.2d 59 (C. A. 4th 1956), cert. den. 77 S.Ct. 667 (2 cases).

"... the equal protection and due process clauses of the Fourteenth Amendment do not affirmatively command integration, but they do forbid any state action requiring segregation on account of race or color of children in the public schools. *Avery v. Wichita Falls Indep. School District*, 5 Cir., 1957, 241 F.2d 230, 233. Pupils may, of course, be separated according to their degree of advancement or retardation, their ability to learn, on account of their health, or for any other legitimate reason, but each child is entitled to be treated as an individual without regard to his race or color." *Borders v. Rippey*, 247 F.2d 268 (C. A. 5th 1957).

In *Plessy v. Ferguson*, which was good law for sixty-eight years until superceded by the *Brown* case, the Supreme Court very wisely recognized that compulsory association can only bring about the tensions and social disorder which have resulted from the 1954 decision:

"If the two races are to meet upon terms of social equality, it must be the result of natural affinities, a mutual appreciation of each other's merits, and a voluntary consent of individuals. As was said by the Court of Appeals of New York in *People v. Gallagher*, 93 N.Y. 438, 448: 'This end can either be accomplished nor promoted by laws which conflict with the general sentiment of the

community upon whom they are designed to operate. When the government, therefore, has secured to each of its citizens equal rights before the law, and equal opportunities for improvement and progress, it has accomplished the end for which it was organized, and performed all of the functions respecting social advantages with which it is endowed.' Legislation is powerless to eradicate racial instincts, or to abolish distinctions based upon physical differences, and the attempt to do so can only result in accentuating the difficulties of the present situation. If the civil and political rights of both races be equal, one cannot be inferior to the other civilly or politically. If one race be inferior to the other socially, the constitution of the United States cannot put them upon the same plane." *Plessy v. Ferguson*, 163 U.S. 537 (1896).

Thus it is seen that while the state is without power to enforce racial segregation in schools by law, the federal government under the Constitution is without power to impose integration upon the individual. As was pointed out by the Court in the *Briggs* case above, "Nothing in the Constitution of in the decision of the Supreme Court takes away from the people freedom to choose the schools they attend. The Constitution . . . does not require integration." The state therefore may within the bounds of the federal constitution establish a system of public education that preserves and guarantees this freedom of choice to the individual—the right of the individual to select his own associates.

This right is especially valuable during the impressionable and formative school age. The educational process is as much a social matter as an intellectual one, and the parent has the right and the duty to place his child in a school where an atmosphere of harmony and congeniality prevails and where the child can work with acceptable companions toward the attainment of their common educational goals. The parent has the responsibility to avoid the selection of a school with an atmosphere of compulsory and undesirable associations and where there exist the contentions and hostilities that so often result from the strife of judicial proceedings and court orders.

This right of free choice of one's associates is in violation of no law, state or federal, and is sanctioned by all enlightened people. It is the foundation stone of all society and is the base upon which progress, happiness, good order and good feeling among people are built.

The United States Supreme Court has very recently held that freedom of association is embraced within the First Amendment guarantees against governmental encroachment. *N.A.A.C.P. v. Alabama*, 357 U.S. 449 (1958); *Bates v. Little Rock*, 4 L.Ed. 2d 480, 485 (1960). The freedom to associate necessarily implies the freedom not to associate.

The question before the Committee is whether the people of Georgia should be permitted to say whether they desire to establish a system of public schools within the framework of the federal court decisions, with such safeguards as will protect the right of free choice of both the parent of the child and of the local community, and that will guarantee that no child in Georgia will be compelled to go to a mixed school against the wishes of his parent or guardian.

When Georgia in 1954 amended its constitution so as to make possible tuition grants from public funds to enable students to attend private schools, the plan offered what then seemed to be an effective alternative to mixed schools. These grants were to be in lieu of all other educational responsibilities of the state, and it was assumed that schools could be closed on a system-by-system basis as they became subject to federal court decrees, and that tuition grants would be made available to each such system only upon the event of its closing. It was not contemplated that a situation would come about wherein the state could legally close its schools only on a statewide basis. That situation has developed because of later decisions by the federal courts. The Amendment, however, in permitting grants in aid, was a far-sighted act of statesmanship and, regardless of the turn of events, can be of great help in working out a solution of the present problem.

V. CONCLUSIONS

The conclusion is inescapable that, to maintain total segregation everywhere in the state, the state will almost certainly have to withdraw from the operation of public schools. Presumably, under the 1954 amendment to the Georgia Constitution (Code 2-7502), the state could give grants or scholarships to individual school children for use in such private schools as may exist or may be established. The state could have nothing to do with the organization, operation, or supervision of such private schools. "State support of segregated schools through any arrangement, management, funds or property cannot be squared

with the Amendment's command that no state shall deny to any person within its jurisdiction the equal protection of the laws." *Cooper v. Aaron*, 358 U.S. 1 (1958).

Leasing publicly owned facilities to private operators to avoid integration has been held invalid. *Aaron v. Cooper*, 261 F.2d 97 (C.A. 8th 1958), and cases cited at page 108. Hence, existing public school buildings, buses, books and the like could not be used except after a bona fide purchase by private schools at fair market value.

There are many other serious and difficult problems involved in the establishment and operation of private schools. Among them is the provision of adequate funds for the many phases of school operations. Buildings must be financed, transportation facilities must be secured, adequate funds for operation must be found. The problems of accreditation for the private schools will demand serious study. The costs per student are likely to be so high that many students will be unable to attend because any possible tuition grants will be inadequate to cover the costs. And perhaps most serious of all is the fact that a democratic state will lose all control over the institutions in which the minds, character and ideas of the future citizens of the state are molded.

It is our conclusion that, although there are some localities where such private schools could be maintained successfully, it will be impractical to develop a system of private schools that will provide adequately for the educational needs of the masses of the people of the state.

Furthermore, even if a system of private schools is adopted, the state, having no control of such schools, would be powerless to prohibit integration in them if some private schools voluntarily integrated. Those who want to mix voluntarily can mix under the law and the state is powerless to prevent it.

The basic alternative to closing the public schools and turning to private schools or accepting integration by court order appears to be a system giving authority to local boards to assign students to particular schools in accordance with the best interests of all students; and the giving of as much freedom of choice as possible to parents and local communities in the handling of their problems; and the giving of assurance that no child will be required to go to school with a child of a different race except on a voluntary basis.

Under a pupil placement plan, the board of each school district, or the governing authority of a school administrative unit, in making assignments of students to particular schools, may properly consider the place of residence of the student, his level of intelligence, his educational attainments, his home environment, his physical condition, and any other facts and circumstances that may bear on the question of the student's ability and fitness to do successful work in a particular school and to maintain satisfactory relationships with those with whom he will be associated, but without reference to race or color.

As stated by Judge Hooper in the Atlanta case:

"Essentially the Plan contemplates that all pupils in the school shall, until and unless transferred to some other school, remain where they are; all new and beginning students being assigned by the Superintendent or his authority, to a school selected by observance of certain standards as set forth in the proposed Plan."

Later Judge Hooper states:

"(3) A general review of the measures taken in many southern states and border states since the rendition of the Brown decision, "both by way of legislative enactments and by way of plans adopted without legislative action, show that the so-called Pupil Placement Plan (also referred to as Pupil Assignment Plans, Enrollment Plans, etc.) have been adopted in one form or another in many states, including Virginia, North Carolina, Alabama, Louisiana, South Carolina, Florida, and Tennessee. In some of these states the plans were adopted soon after the Brown decision, although there was at the time of the adoption of the same, no litigation pending nor any action being taken toward the elimination of racial discrimination. The plans were no doubt adopted against the day when such efforts would be made and they were adopted in full recognition of the fact that the people of the states adopting them had no desire to abolish segregation, but considered it wise to make plans for the future against the day when segregation in such states might be enjoined by the courts. Mississippi was one of the first states to adopt such legislation, though as yet there have been no efforts to abolish segregation in that state."

Similar plans have been held valid by the federal courts. *Shuttlesworth v. Birmingham Bd. of Educ.*, 358 U.S. 101 (1958); *Parham v. Dove*, 271 F.2d 132 (C. A. 8th 1959); *Covington v. Edwards*, 264 F.2d 780 (C.A. 4th 1959).

A provision permitting each school district, confronted with an unsatisfactory situation, to determine for itself whether to close its schools, would give each community the maximum freedom of choice. It is assumed that such a provision would also allow subsequent action by the school district to alter the original decision; that is, the community could decide, from time to time, whether it wished to reopen closed schools or to close integrated ones. The validity of such a provision has not been tested in the courts, but, in the light of many analogous situations, it should be upheld. Such provisions are in effect in other states.

The evidence shows that public school problems throughout the state are infinitely varied. A plan giving to each local community the right to determine its own course of action on problems of a peculiarly local nature appears to offer the best and most democratic procedure for solving these peculiarly local problems.

Maximum freedom

A provision permitting each parent to withdraw his child from an integrated school and to have the child assigned to a non-integrated school, if one is available, or else given a tuition grant for private schooling, appears to provide the maximum freedom of choice to each parent. The right of a parent to choose between public and private schools has never been questioned; in fact, such a right has been expressly upheld by the Supreme Court. *Pierce v. Society of Sisters*, 268 U.S. 510, (1925). It is difficult to see how a plan of tuition grants, available to all parents who desire private education for their children, could be challenged successfully.

If the schools are to be closed, the step should be taken as a deliberate choice, with the expectation that the state will go out of the school business permanently, except for providing tuition grants or scholarships and that the people will resort to private schools. Closing the schools otherwise is a useless gesture and can cause nothing but confusion, great economic loss, and utter chaos in the administration of the school system.

It should also be borne in mind that whatever the final decision may be as to the course of action to be followed, there will be far greater mobility and flexibility in the handling of local school situations, if the choice of the course of action can be made freely at the local level rather than under the compulsion of a court order. It has been abundantly demonstrated in other jurisdictions that the federal courts do not hesitate to strike down, as attempts to circumvent their orders, statutes or practices which might have been approved as valid if taken voluntarily.

Those who insist upon total segregation must face the fact that it cannot be maintained in public schools by state law. If they insist upon total segregation everywhere in the State, they must be prepared to accept eventual abandonment of public education.

Those who insist upon total segregation, but who back away from closing the schools, are not only deceiving themselves and the people, but are creating a very difficult and harmful situation: if the State stands upon the present laws, yet declines to accept the ultimate closing of the schools, the result will be integration in its worst form: coercive integration by court order, with no safeguards available to the local people and no freedom of action on the part of the parents of children affected.

The alternative is to establish a system of education within the limitations of the Supreme Court decision, yet one which will secure the maximum segregation possible within the law, which will vest the control of its schools in the people of the community, and which will ensure the parent the greatest freedom in protecting the welfare of his child.

Changes necessary

To put this alternative into effect, the Committee believes that some changes are necessary in the Georgia Constitution. The guaranty that no child should be required to attend school with a child of another race ought to be one of the fundamental rights protected by the Constitution. The provision for local control of schools probably requires Constitutional authority vested in the General Assembly. There is no authority in law for a purely advisory referendum, and under a representative form of government. Any such referendum could not properly be made binding on the General Assembly.

Since any Constitutional amendment requires ratification by a vote of the people in a general election, this would provide the opportunity for the people to determine for themselves the course which they desire to take. The complex details of the necessary statutes are a responsibility of the General Assembly and could be developed practicably only through the legislative process.

VI. THE RECOMMENDATION

The Committee recognizes, as has been heretofore stated, that the people of Georgia, though overwhelmingly in favor of both segregation and public schools, are widely divided as to the best means of meeting the situation that confronts them; that the question profoundly affects every phase of the future life and activities of the people of the state; that the question should be considered in an atmosphere of calmness and far-sighted wisdom; that the question should be decided only after the most careful deliberation and the most thoughtful consideration of all the issues involved; and that the public school system is of such transcendent importance that its fate ought to be decided by a direct vote of the people. The people of Georgia have never been called upon to make a more important decision.

The Committee further recognizes that the primary concern of each Georgia citizen is the welfare of his own children and that, regardless of the fate of the public schools, each parent should be protected by the Georgia constitution from being forced to allow his child to attend a school under what the parent considers intolerable circumstances.

The Committee further recognizes that the situation before it is one subject to unforeseen future developments and that the Legislature should have the maximum latitude in meeting such developments, including certain constitutional powers which it does not now possess.

We therefore recommend:

1. That the General Assembly propose to the people of Georgia an amendment to the Constitution, reading substantially as follows:

"Notwithstanding any other provision in this Constitution, no child of this state shall be compelled against the will of his or her parent or guardian, to attend the public schools with a child of the opposite race; that any child whose parent or guardian objects to his attending an integrated school, shall be entitled to reassignment, if practicable, to another public school, or shall be entitled to a direct tuition grant or scholarship aid, as provided by this Constitution and as may be authorized by the General Assembly."

2. That the General Assembly propose to the people of Georgia a further amendment to the Constitution substantially as follows:

"Notwithstanding any other provision of this Constitution, the General Assembly may provide for a uniform system of local units for the administration of the schools and authorize any such local administration unit, as defined by the General Assembly, to close schools within the unit or to reopen the schools in accordance with the wishes of a majority of the qualified voters of the unit as expressed in a formal election called for the purpose of ascertaining the wishes of the voters."

3. That the General Assembly forthwith enact legislation providing for tuition grants or scholarships for the benefit of any child whose parent chooses to withdraw said child from an integrated school and for the benefit of any child whose school has been closed, whether as a result of existing or future Georgia laws or as a result of a court order.

4. That the General Assembly forthwith enact legislation making the existing teacher retirement system available to teachers in private schools in the same manner and on the same basis as it now extends to teachers in public schools.

5. That the General Assembly consider whether, in view of the urgency created by the Atlanta case and other cases which may be brought, it will propose to close the public schools in order to maintain total segregation throughout the state or whether it will choose a course designed to keep the schools open with as much freedom of choice to each parent and community as possible; and, if it chooses the latter course, that it enact legislation enabling each school board or other local body to establish a pupil-assignment plan; empowering the people of each community to vote whether to close their schools in the event of integration or to continue the operation of said schools, and enabling each parent to withdraw his child from an integrated school and have the child reassigned to a segregated school or receive a tuition grant or scholarship for private education.

The General Assembly Committee on Schools:

John A. Sibley, Chairman; Howell Hollis, General Counsel; John W. Greer, Secretary; Robert O. Arnold; Samuel J. Boykin; Harmon W. Caldwell; Charles A. Cowan; John W. Dent; Zade Zenimer; Dr. Claude Purcell; and Homer Rankin.

REPORT BY MINORITY

I. RESPONSIBILITY OF COMMITTEE

This Committee was created by the 1960 Session of the General Assembly to study the existing school problem in Georgia.

The General Assembly directed the Committee to hold hearings, at least one in each Congressional District of Georgia, to ascertain "whether future education is to be afforded through direct tuition payments for use in private schools devoid of governmental control, or whether the public school system as it presently exists shall be maintained notwithstanding that the school system of Atlanta and even others yet to come, may be integrated."

Said resolution creating this Committee further provides:

"The General Assembly Committee on Schools shall proceed immediately upon the adjournment of this session to hold public hearings under such rules and procedures as may be promulgated by the Committee, and after ample notice thereof, to the extent of at least one hearing in each Congressional District of this State on the subject of maintaining public schools in Georgia in light of the order and judgment of Judge Hooper, or whether the people prefer a system of direct tuition grants under the Georgia Constitution for use in private schools, and that such suggestions as may be offered on or in modification of either course be received and considered, and that the Atlanta plan also be considered."

II. RESULTS OF HEARINGS

This Committee has conducted public hearings in eleven Georgia Communities, at least one in each Congressional District. The results show that of all witnesses testifying 940 were for option No. 1 and 779 for option No. 2. The counties voted 91 for option No. 1 and 48 for option No. 2; nine counties were evenly divided. Seven districts voted clearly for option No. 1, and three for option No. 2. All of these computations include both white and colored witnesses.

The General Assembly did not cast us adrift on an uncharted sea of deliberation without any semblance of a plotted course to guide our processes of decision. The General Assembly was not concerned with our individual opinions on the issues presented. If an independent judgment unaffected by the forces of external public opinion were all that had been called for, the lawmakers could have made such a determination for themselves, and there would have been no occasion for a fact-finding tribunal. Instead, the Legislature stated its belief that "the people of Georgia may wish to make a deliberate determination . . ." and we were explicitly directed to hold "public hearings" and receive evidence "on the subject of maintaining public schools in Georgia in light of the order and judgment of Judge Hooper, or whether the people prefer a system of direct tuition grants. . . ." (Emphasis supplied). The requirement by law of a hearing carries with it by implication the additional requirement that whatever decision is reached must be based on the evidence received at such hearing, *I.C.C. v. L. & N. Railroad Co.*, 227 U.S. 88 (1913), and any finding completely contrary to the evidence so adduced is erroneous and constitutes a denial of due process. *Thompson v. Louisville*, 4 L.Ed. 2d 654 (1960).

The Committee has held its hearings and received evidence in the form of personal testimony and written communication. The people having spoken in such unmistakable language, it is nothing less than an intolerable affectation of superior virtue for us now to proclaim to them, "Well, notwithstanding that you have made clear your sentiments, we think that you are wrong and that we know what is best for you."

As a result of the hearings held, we find virtually unanimous sentiment among the people of this State of all races that continued maintenance of separate education is in the best interests of all our citizens.

We find further, upon considering all evidence presented, that any precipitant action, resulting in enforced integration at this time in any community, would do incalculable harm to the children and would result in disastrous consequences which could and should be averted.

We find that enforced integration in the schools of this State would cause serious civil turmoil, bitterness, rancor, and internal strife, inflicting much harm on the people of Georgia and accomplishing nothing for the welfare of its citizens.

This Committee finds further that those who instituted, and those who control, the present school litigation in Georgia are not interested in the true well-being of either race, and are motivated by designs inconsistent with the future happiness and progress of the citizens of this State.

III. PUPIL PLACEMENT OR "TOKEN INTEGRATION"

We believe that "pupil placement," "token integration," or "controlled desegregation" are one and the same.

Those who provoked the pending litigation in Georgia and elsewhere have publicly proclaimed unequivocal dissatisfaction with any plan short of massive and total integration on all levels. Many of the witnesses, both white and colored, representing the NAACP and other radical elements which appeared before the Committee expressed themselves to this effect. Several such witnesses specifically attacked the Atlanta pupil placement plan as an illegal scheme designed to evade the Court's decision in the Brown case.

IV. PRESENT GEORGIA LAWS

The Constitution and laws of Georgia clearly do not envision, permit, provide, or authorize total school closings in Georgia in any circumstance. All persons who have read the law know this.

His Excellency, the Governor of Georgia, in a speech prepared for delivery before the Georgia Education Assn. on March 19, 1960, had this to say.

"As long as I am governor, Georgia children will continue to receive a good education by Georgia teachers.

"Let's give the lie once and for all to the canard that if one school is integrated in Georgia, all the schools will close.

"The Georgia law simply does not authorize or contemplate massive school closings under any circumstances.

"We don't want to see even one school closed, and this will come about only as a last resort after all other measures have failed.

"The education of the children in that school would be provided for and the teachers would be taken care of and their retirement rights protected."

After a diligent search by responsible legal authorities and members of the Committee it was found that in no State has the result of litigation been the closing of all public schools.

Should any effort be made through any legal device or scheme to close all public schools of the State or to deny funds for their operation, the burden of responsibility must lie elsewhere than on the State Constitution, the State laws, State Officials or the General Assembly.

The Committee as a whole has definitely concluded that it is in the best interests of this State for the newspapers, the radio stations, the television stations, other information media, civic, fraternal, farm, labor, veteran, educational, business, professional, and all other groups and organizations in this State to exert every influence to maintain separation of the races in this State, and the public schools thereof, on a voluntary basis. If public opinion would unite to this end, we are certain that there would be no integration in Georgia because there would be no litigation in the first instance.

The committee further deplores and condemns efforts on the part of Communist-inspired organizations who would do otherwise, and thus, inflict incalculable damage on the welfare and future happiness of the people of this State.

V. RECOMMENDATIONS

After due deliberation, and in full consideration of the facts as herein set forth, we recognize that it is difficult to formulate recommendations that would offer any perfect solution to the problem presented.

However, as the most effective means of dealing with the problem, we recommended that the General Assembly provide, either through the form of appropriate constitutional amendment, and or through enactment of new statutes or amendments to the existing laws, measures which would accomplish the following purposes, to-wit:

1. Guarantee that no Georgia child shall be forced against the desire of his parent or guardian to attend any public school wherein a child of the opposite race is enrolled.

2. That the General Assembly of Georgia, pursuant to the 1954 Amendment to the Georgia Constitution, as advocated and proposed by Honorable Herman E.

Talmadge, then governor of Georgia, enact such appropriate enabling legislation as may be required to further effectuate the grants-in-aid amendment so as to provide for direct grants of state, county, and municipal funds to citizens of the state for educational purposes, in discharge of all obligations of the State to provide adequate education for its citizens.

3. That the public school system be preserved on a segregated basis as far as it is possible to do so unless closed by unprecedented federal court decree, and that the system of grants be instituted only as a last resort.

4. That the governor and the General Assembly of Georgia take such action and enact such measures as may be required from time to time, consistent with the welfare and best interests of the children of Georgia.

The General Assembly Committee on Schools:

JOHN P. DUNCAN, Vice Chairman; GEORGE BROOKS; J. BATTLE HALL;
RENDER HILL; WALLACE J. JERNIGAN; J. W. KEYTON; H. WALSTEIN
PARKER; and H. EULOND CLARY.

STATEMENT BY RENDER HILL

Although having concurred in the minority report of the General Assembly Committee on Schools, I wish to express certain of my own conclusions and findings which are submitted herewith:

From the testimony of the witnesses appearing at these hearings my findings of fact are as follows:

1. Practically all of the people of Georgia favor segregated schools.
2. Practically all of the people of Georgia favor public education.
3. Approximately 55 per cent of the witnesses appearing before the Committee believe it would be preferable to abandon the public education system rather than accept any integration.
4. Approximately 45 per cent of the witnesses appearing before the Committee believe it would be preferable to accept some integration rather than abandon the public education system.
5. That the beliefs of the witnesses appearing before the committee vary with the percentage of Negro population in their particular locality. That is, the larger the Negro population the greater the belief that it would be preferable to abandon public education than to accept any integration.

From the testimony of the witnesses appearing at the hearings my conclusions are as follows:

1. The best and most workable form of education for all the children of the State of Georgia is a public segregated school system.
2. That any form of integrated school system in any part of the State of Georgia would cause irreparable harm to the present good relationship of the races.
3. That the State of Georgia must resolve the problem as a whole because the state cannot support financially and equitably a dual system of public education and a system of private schools through individual grants.

I believe that the federal courts intend to enforce the edicts of the Supreme Court of the United States decreeing integrated public education.

I believe that the foundation of our form of government insures personal freedom and the absolute right of choice of association.

However, in view of the disparity of the testimony of the witnesses concerning these divergent principles and in view of the fact that the responsibility for the conduct of the affairs of the people of the State of Georgia rests in their General Assembly;

And in view of the fact that the members of the next General Assmby have not yet been elected, I recommend:

1. That each representative and senator elected to the 1961 General Assembly fully inform himself concerning the school situation in the State of Georgia and carefully determine the wishes of the people of his county, so that each may properly and fully present these views at the 1961 Session;

2. That the General Assembly exercise its inherent right at the 1961 Session to resolve these issues;

3. That the General Assembly enact legislation so that no child will be compelled to attend an integrated school and if necessary adopt such statutes as would enable each school to be created as a separate autonomous school district with separate governing authorities.

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